DURHAM UNIVERSITY

MULTILATERAL VERSUS BILATERAL TRADE: POLICY CHOICES FOR OMAN

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ABSTRACT

On November 9, 2000, the Sultanate of Oman (Oman) became an official member of the World Trade Organization (WTO) and on January 19, 2006 Oman signed a free trade agreement (FTA) with the United States (U.S.). Hence, Oman has pursued two different trading approaches; the WTO multilateral approach based on non-discrimination and an FTA bilateral approach based on trading preferences with a single partner. This study evaluates the policy choices facing Oman's trade under each approach and investigates which system provides more flexible arrangements for Oman. The evaluation is based on a qualitative methodology, where three research methods are used for collecting data; official documents, semi-structured interviews, and focus groups. The content and codification analyses of the data clearly demonstrate that Oman faces better policy choices under the mutliateral WTO approach than with the bilateral FTA approach and that the WTO arrangements are more flexible than those of the FTA.

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STATEMENT OF AUTHORSHIP

I hereby declare that the work submitted in this thesis is my own, except where duly referenced. This work has not previously been submitted for any other degree at this university or any other university.

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TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

LIST OF APPENDICES (VOLUME TWO)

ABBREVIATIONS AND ACRONYMS

AB: Appellate Body
ABTS: Agreement on Basic Telecommunications Services
ACP: African, Caribbean and Pacific Countries
ACWL: Advisory Centre on WTO Law
AFL-CIO: American Federations of Labor and Congress of Industrial Organizations
ALFTA: Arab League Free Trade Area
ANZCER: Australia-New Zealand Closer Economic Relations
AOS: Agreement on Safeguards
APEC: Asia Pacific Economic Cooperation
ARO: Agreement on Rules of Origin
ASEAN: Association of Southeast Asian Nations (ASEAN).
AT: Annex on Telecommunications
ATC: Agreement on Textiles and Clothing
AV: Appraised Value of the Good
BIT: Bilateral Investment Treaty
BRICs: Brazil, Russia, India, and China
CAP: Common Agricultural Policy
CAFTA-DR: Central America-Dominican Republic
CBO: Central Bank of Oman
CCC: Customs Co-operation Council
CGP: Committee on Government Procurement
CNPC: China National Petroleum Corporation
COS: Committee on Safeguards
COMESA: Common Market for Eastern and Southern Africa
COMESSA: Committee of Sahel-Saharan States
COE: Committee of Experts
CPA: Contonou Partnership Agreement
CPC: Central Product Classification
CRTA: The Committee on Regional Trade Agreements
CTC: Citizens Trade Campaign
CTS: Council of Trade in Services
DCP: Direct Cost of Processing Operations
DDA: Doha Development Agenda
DFPRW: Declaration on Fundamental Principles and Rights at Work and its Follow-up
DG: Directorate General
DIO: Directorate of International Organizations
DPW: Dubai Port World
DSB: Dispute Settlement Body
DSP: Dispute Settlement Process
DSU: Dispute Settlement Understanding
DVC: Digital Video Conferences
EAFTA: East Asian Free Trade Area
EC: European Community
EEC: European Economic Community
EIU: Economic Intelligence Unit
EPA: Economic Partnership Agreement
EU: European Union
FDI: Foreign Direct Investment
FTA: Free Trade Agreement between the Sultanate of Oman and the United States of America
FTAA: Free Trade Area of the Americas
GATT: General Agreement on Tariffs and Trade
GAFTA: Greater Arab Free Trade Area

GATS: General Agreement on Trade in Services
GC: General Council
GCC: Gulf Cooperation Council
GCTG: General Council of Trade in Goods
GDP: Gross Domestic Product
GOCM: Good Offices, Conciliation and Mediation
GSP: General System of Preferences
GP: Government Procurement
GPA: Agreement on Government Procurement
GTO: General Telecommunications Organization
HIV: Human Immunodeficiency Virus
HWP: The Harmonisation Work Programme
IFFCO: Indian Farmers Fertiliser Company
IHRA: Interstate Horse Racing Act
IMF: International Monetary Fund
IOR-ARC: Indian-Ocean Rim
IPEC: International Program for the Eradication of Child Labour
IPR: International Property Right
IIPA: International Intellectual Property Alliance
ITO: International Trade Organization
ILO: International Labour Organization
JC: Joint Committee
LAC: Labor Advisory Committee for Trade Negotiations and Trade Policy
LCM: Labor Corporation Mechanism
LDC: Least Developing countries
MC: Ministerial Conference
MCT: Ministry of Communications and Transport
MAS: Majlis Al-Shura (Consultative Council)
MAD: Majlis Al-Dawla (State Council)
MD: Ministerial Decision
MEFTA: Middle East Free Trade Area
MEPI: Middle East Partnership Initiative
MFA: Multi-Fibre Agreement
MFN: Most favoured nation principle
MNE: Ministry of National Economy
MOCI: Ministry of Commerce and Industry
MRP: Model of Rules of Procedures
MTS: Multilateral trading system
NAFTA: North American Free Trade Agreement
NAMA: Non-Agriculture Market Access
NAWRAS: Omani Qatari Telecommunications Company
NGOs: Non-governmental organisations
NT: National Treatment
OAPEC: Organization of Arab Petroleum Exporting Countries
OCC: Oman Cement Company
OCCI: Oman Chamber of Commerce and Industry
OECD: Organisation fro Economic Cooperation and Development
OFOC: Oman Fibre Optic
OIFC: Oman-India Fertiliser Company
OLNG: Oman Liquefied Natural Gas
OMANTEL: Oman Telecommunications Company
OOC: Oman Oil Company
OR: Omani Rial
P&Q: Peninsular and Oriental Steam Navigation Company
PDO: Petroleum Development Oman
PTA: Preferential trade agreement
PTT: Preferential Tariff Treatment

QIZ:	Qualifying Industrial Zones
QLNG:	Qalhat Liquefied Natural Gas
RAMs:	Recently Acceding Members
RIAA:	Recording Industry Association of America
ROO:	Rules of Origin
RP:	Reference Paper
SACU:	South African Customs Union
SDR:	Special Direct Rights
SLA:	Subcommittee on Labor Affairs
SPS:	Agreement on Sanitary and Phytosanitary measures
SQU:	Sultan Qaboos University
TB:	Tender Board
TBT:	Agreement on Technical Barriers to Trade
TC:	Technical Committee on Rules of Origin
TIFA:	Trade and Investment Framework Agreement
TGP:	Transparency in Government Procurement
TMRTA:	Transparency Mechanism for Regional Trade Agreements
TPA:	Trade Promotion Authority
TPRB:	Trade Policy Review Body
TRA:	Telecommunications Regulatory Authority
TRIMS:	Agreement on Trade-Related Investment Measures
TRIPS:	Agreement on Trade-Related Aspects of Intellectual Property Rights
UAE:	United Arab Emirates
UK:	United Kingdom
UNCTAD:	United Nations Conference on Trade and Development
US:	United States of America
USTR:	United States Trade Representative
VOM:	Value of a material
WCO:	World Customs Organization
WIPO:	World Intellectual Property Organization
WTO:	World Trade Organization
WWII:	Second World War

CHAPTER ONE: RESEARCH OVERVIEW

1.1. Introduction

The free trade ideology where goods and services can be freely exchanged between trading partners without obstacles is now the global consensus (Ransom, 2001). It is the ideology, which is rooted in classical economics beginning with Dudley North (1641-1691), Adam Smith (1723-1790), and David Ricardo (1772-1823), who all supported free trade (Rubin, 1997). It is also the policy which the Sultanate of Oman (hereafter Oman)[1] has adopted. The principles of free trade and open markets are the objectives of global economic institutions such as the World Trade Organization (WTO) and free trade agreements alike. These open market trading arrangements involving global competition are thought to be conducive to the national welfare of all countries (Murray, 2004).

Trade activities for Oman are deeply rooted in its history. In the past, Oman used to trade with countries such as Egypt and India. Of a particular importance, Oman had a major influence in East Africa in the eighteenth century mirrored in the actual presence of Oman's authority in Zanzibar. Such an influence allowed Oman to increase its trading activities in that region (The Souk of Oman, 2008). However, Oman's modern development started only in 1970 when its current ruler, Sultan Qaboos bin Saeed came to power. Depending heavily on oil as the main source of income, Oman witnessed in the first two decades of its development process rapid economic growth, rising living standards, and full employment (Ministry of National Economy, Development Strategy (1970-1995), 2006b). However, this has changed from the 1990s onwards as Oman has started to experience serious economic problems mainly due to the fluctuations of the price of oil in the international market accompanied by a substantial decrease in crude oil production from 955,000 (in 2000) to 774,000 (in 2005) barrel per a day (MNE, Statistical Year Book 2005, 2006a). Also, the steady increase in the number of job seekers has been of a great concern to the Omani Government as an estimated 30,000 young Omanis enter the job market every year, and the Government can no longer afford to provide employment for the majority of the local workforce (Economic Intelligence Unit, Oman 2002, 2002).

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[1] The Sultanate of Oman is the third largest country in Arabia, with a population of about 2.8 million (including non-nationals) and a total land area of 309,500 sq km. The Sultanate occupies the southeast corner of the Arabian Peninsula. Its coastline extends 1,700 km from the Strait of Hormuz in the north, to the borders of the Republic of Yemen in the south and overlooks three seas - the Arabian Gulf, the Gulf of Oman, and the Arabian Sea (Ministry of Information, 2002, p.1).

Consequently, Omani policy-makers have sought to overcome these challenges and achieve economic prosperity by adopting a four-pillar plan as envisaged in "Oman Economic Vision 2020". The first is "diversification" of national income away from oil sector, with non-oil sectors assuming the leading role. The crude oil sector's share of Gross Domestic Product (GDP) is estimated to drop to around 9 percent in 2020, compared with 44.9 percent in 2006. The gas sector is expected to contribute to around 10 percent to GDP compared to 3.6 percent in 2006 and non-oil industry to participate by 29 percent compared to 14.2 percent in 2006 (MNE, Long-term Development Strategy (1996-2020), 1995; MNE, the Seventh Five-Year Development Plan (2006-2010), 2007a).

The second pillar is "privatisation" which aims at reducing the role of the Government in economic activity and fostering the development of an efficient and competitive private sector. Privatisation has been carried out in different sectors such as electricity where a number of power projects have been contracted to the private sector. Another example is telecommunications where 30 percent of shares of the Government owned Oman Telecommunications Company (Omantel) have been offered to the public and pension funds and where a second mobile phone license has been given to a foreign investor; NAWRAS; the Omani Qatari Telecommunications Company.

The third pillar is "Omanisation" which aims at reducing unemployment by expanding opportunities for national labour to participate in various economic sectors and making national labour available for private companies. This is achieved by enhancing the education and training programmes for Omanis to obtain the required skills and qualifications (MNE, 1995).

The fourth pillar is "economic liberalism" where the principles of open market and free trade are adopted with the objectives of allowing greater integration of the economy of Oman into the global economy and providing the appropriate legal and economic conditions for implementing the policies of diversification, privatisation, and Omanisation. Thus, with the expansion of trade, barriers to imports and exports are removed and greater market access for Omani products and services can be secured (MNE, 1995). The integration of the economy of Oman in the international economy is implemented by pursuing two types of trade approaches; multilateral (by being an official member to the World Trade Organization – WTO - on November 9, 2000) and bilateral (by signing a free

trade agreement – FTA - with the United States of America – U.S. - on January 19, 2006). Thus, Oman's trade policies are much influenced by its involvement in these two trading arrangements. As a result, Oman must abide by the policies and regulations of the WTO and the FTA and must not deviate from their agreements.

1.2. Background: the development of the Multilateral Trading System (MTS) and its main characteristics

When Oman applied for WTO membership in April 1996, the WTO at that time was celebrating its success as the most efficient trading system governing the world trade. This success came about after the excessively long Uruguay Round of difficult negotiations that lasted more than seven years (1986-1994). Developed countries sought to liberalise international services markets and apply strict measures on intellectual property rights to protect their products, whereas developing countries sought to open the protected textiles and agricultural markets of the developed countries (Bhagwati, 1991; Croome, 1999). Disagreements were also evident between the EU and the U.S. over details and the extent to which liberalisation of agriculture should be carried out. They accused each other of protecting their agriculture markets (Golt, 1988). Their bilateral negotiations on the EU agricultural policy took a very long time and caused serious challenges to the success of the whole multilateral negotiations (Meunier, 2005). However, by November 1992, most of the differences between the U.S. and the EU on agriculture were resolved and on April 15, 1994 the final deal of the Uruguay Round was signed by 123 countries (WTO, Understanding the WTO, 2005a).[2]

As a result, the WTO was established as an international institution governing the world trade; thereby the third pillar of international economic institutions envisaged in 1944 alongside the World Bank and the International Monetary Fund (IMF) had been restored (Krueger, 1998). Countries accepting the Agreement Establishing the WTO have become to be called "members" of the WTO, not "contracting parties" as was the case under General Agreement on Tariffs and Trade (GATT 1947) (WTO, 2005a). Hence, unlike the FTA which is still untested and is no more than a bilateral trade agreement between Oman and the U.S., the WTO is a robust institution that came about as a result of a long history of development and difficult multilateral negotiating experience.

[2] For full accounts of the history of the Uruguay Round negotiations, see John Croome, 1999.

This development of the multilateral trading system (MTS) goes back to the immediate period after the World War II when the U.S. proposed the establishment of an International Trade Organization (ITO) to govern trade between nations and eradicate possibilities of returning to the intra-war protectionism (Bhagwati, 1988, Gibb, 1994). Although the ITO project failed due to the refusal of the U.S. Senate to ratify it (Khalifa, 2005), the MTS survived in the form of the provisional treaty of the GATT 1947 (Krueger, 1998; Schott & Buurman, 1994). Despite being a legal contract only, lacking any rule-making authority and adequate dispute settlement procedures, the GATT managed to successfully govern the world trade and provided a sufficient framework for multilateral trade liberalisation until 1995 when it was replaced by the WTO (Radwan, 2001).

1.2.1. Legal and institutional framework of the WTO

Oman is now an official member of a well-established multilateral trading system governed by the WTO (Fulaifil, 2000). According to Article 8 of the WTO Agreement, the WTO entertains a legal personality and members are required to grant it the required capability, privileges, and immunities to carry out its functions (WTO, the Legal Text, Agreement Establishing the WTO, 1995a). The WTO provides the common legal and institutional framework for the MTS (Gilpin and Gilpin, 2001; Das, 1998). The legal framework is based on three types of documents; 1) multilateral agreements, which are binding to all WTO members, 2) plurilateral agreements, which are only binding to their signatories, and 3) ministerial declarations and decisions, which also constitute part of the legal system. Appendix 1.1 provides some details about these agreements.

The institutional framework of the WTO is reflected in its four hierarchal layers, as is illustrated in figure 1.1 below. The first is the Ministerial Conference (MC), which is, according to Article 4.1 of the WTO Agreement, the highest decision making authority and is composed of representatives of all WTO members at the ministerial level (WTO, 1995a). Ministerial declarations, decisions, and understandings all originate from the MCs and are highly important in the conduct of the multilateral trade relations in as much as they set the policy directions, parameters, and guidance for the future work programme of the WTO (Lanjouw, 1995; Hainsworth, 1998).

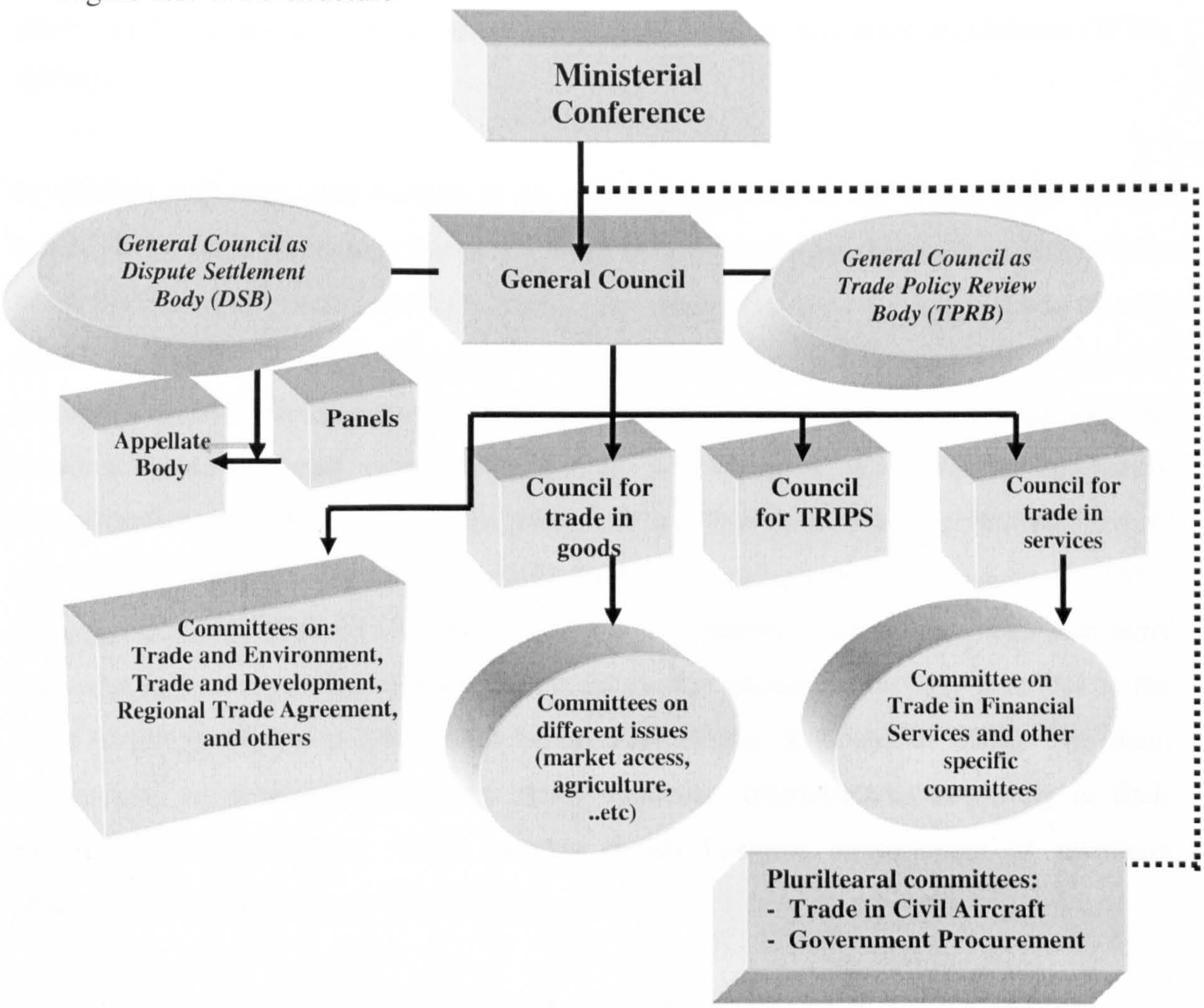
Since the establishment of WTO in 1995, there have been six MCs, the most important of which is the Doha Round in 2001 which has provided the mandate for negotiations on the very comprehensive Doha Development Agenda (DDA). However, due to the increasing conflicts between developed and developing countries over many issues under negotiations, the Doha Round has been facing many difficulties and the subsequent MCs after the Doha MC; Cancun (10-14 September 2003) and Hong Kong (13-18 December 2005), did not prove very successful. Appendix 1.2 provides details on the Ministerial Conferences and their main declarations and decisions since 1995.

The second layer is the General Council (GC), which consists of representatives of all WTO members, usually at the level of their permanent Ambassadors to the WTO in Geneva. The GC acts on behalf of the MC, which only meets every two years. Also, according to Article 4.3 of the WTO Agreement, the GC acts as the Dispute Settlement Body and as the Trade Policy Review Body (WTO, 1995a).

Third, there are three specific Councils, namely, the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS). These councils carry out the functions assigned to them by their respective agreements and by the GC. Membership to these councils, as well as the committees or subsidiary bodies under them, is open to representatives of all members of the WTO (Krueger, 1998).

Fourth, there are other committees in the WTO structure such as, the Committee on Trade and Environment, the Committee on Trade and Development, the Committee on Balance of Payments Restrictions, and the Committee on Budget, Finance, and Administration. These committees carry out the functions assigned to them by the WTO Agreement and the multilateral trade agreements, and any additional functions assigned to them by the GC. Membership in these committees is also open to representatives of all members of the WTO (WTO, 2005a).

Figure 1.1: WTO structure



→ Indicates that each layer reports to the layer above.
— Indicates that the General Council undertakes the work of the DSB and TPRB
.... Indicates that Plurilateral committees inform the GC about their activities although not all WTO members are parties to them

Source: Compiled by the author from (WTO, Understanding the WTO, 2005a).

1.2.2. The main principles of the multilateral trading system (MTS)

The MTS functions on the basis of non-discriminatory principles of the "most-favoured nation (MFN)" and the "national treatment (NT)" that run throughout all of the WTO agreements. According to Article 1.1 of the GATT, the MFN requires each member to treat all imports from other countries equally and indiscriminately. Hence, any product which is made in one member country must be treated no less favourably than a very similar product that originates in any other member country with regards the application and administration of import and export duties and other related measures (Matsushita, M. et al, 2006). No member may award special trading advantages to another, or discriminate

against it (Desta, 2002). The NT requires that foreign goods - after they have satisfied the required border measures – must be treated equally and no less favourably than similar goods produced domestically in terms of internal taxation and other regulations (WTO, 2005a).

In addition, reducing trade barriers is the ultimate objective of the WTO. These barriers can be in the form of customs duties; i.e. tariff or non-tariff measures such as import bans of quotas of certain products (WTO, 2005a). The tariff reductions (or concessions) that are agreed by the GATT/WTO members in multinational negotiations are listed in separate schedules called "Schedules of Concessions". These concessions are bound and the member country cannot raise tariffs above the bound levels without negotiating compensation with affected countries. Hence, if any new reductions are reached then all other WTO members should also benefit from these reductions according to the MFN principle (Pedler, 2001). Moreover, once tariffs commitments are bound, other non-tariff measures such as imposing quotas and other equivalent measures that have an effect on the value of the tariff concession cannot be used (Hoekman & Kostecki, 2001). The main objective is to provide transparency about members' commitments according to their Schedules of Concessions, which in turn makes business environment of members predictable and transparent (WTO, 2005a).

Moreover, there are many transparency mechanisms incorporated into the agreements of the WTO and aim to ensure that market access is achieved. Examples include; Article 10 of the GATT, Article 3 of the General Agreement on Trade in Services (GATS), Article 63 of the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs), Articles 2 and 10 of the Technical Barriers to Trade Agreement (TBT), Article 7 and Annex B of the Sanitary and Phytosanitary Measures Agreement (SPS). All these provisions require member countries to make available to the public all laws, regulations, judicial decisions, administrative measures, international agreements and any other arrangements that can affect imports and exports (Julia, 2003). These laws and regulations must be published before their implementation so that other governments, business people, and traders become acquainted to them. Any changes to these arrangements must be notified to the WTO (Hilf, 2001).

1.2.3. Decision-making processes in the WTO

Most decision-making processes in the WTO are based on bargaining, consultation and consensus between member countries. Consensus does not mean unanimity but implies that no delegation physically present in the General Council has a fundamental objection on an issue (Hoekman and Kostecki, 2001).[3] Thus, in GATT/WTO practice, a decision is deemed to have been taken by consensus if no member present at the meeting when the decision is taken formally objects to the proposed decision. Those members not present – or those who abstain – do not count and the decision can be taken without them. The wisdom behind basing the decision-making process on consensus is to ensure that only decisions on which there is no major opposition – and consequently which have good chances of being implemented – are made. Hence, taking decisions by consensus *allows all members to ensure their interests are properly considered* (WTO, Understanding the WTO, 2007q, p.102). This signifies the importance of negotiating skills and coalition in the process of decision making in the WTO. The stronger the country is in negotiations, influence, and in bringing other countries of similar interests in a coalition; the greater is the chance of getting its interests achieved.

However, if consensus cannot be reached, decision-making is based on voting; each member of the WTO has one vote. In general, decisions are taken by a majority of the votes cast, unless otherwise provided for in the WTO Agreement, as outlined in Table (1.1) below (WTO, 2007q).

Table 1.1: Decision-making in the WTO

Decision-making rule	**Type of issue**
Unanimity	Decisions relating to interpretation of general principles such as the MFN or national treatment principles.
Three-quarter majority	Decisions relating to interpretation of the provisions of the WTO agreements and waivers of a member's obligations.
Two-thirds majority	Decisions to amend provisions of the multilateral agreements and decisions on accessions by new members.
Simple majority	Where it is not otherwise specified and where consensus cannot be reached.

Source: Hoekman and Kostecki, 2001, p.57.

[3] For comprehensive analysis on problems entailing the decision making process in the WTO, see Jeffery and Jayashree (2000).

Nevertheless, there are certain important points that must be clarified about the voting system of the WTO. First, unlike in the consensus practice, if voting occurs and an amendment passes, the majority required is relevant to all WTO members, not just those that happen to be present in a particular meeting (WTO, 2005a). Second, if a member disagrees with any amendment that passes the required vote, it will not be bound by this particular amendment. Third, the MC may decide to ask a member that does not accept an amendment to withdraw from the WTO, or grant it a waiver. In theory, these voting rules appear to be quite important as they can affect the obligations of membership in the Organization. In practice, however, voting does not occur because of the following reasons. First, the value and the importance of the WTO has always been linked to the major traders such as the U.S, the EU, and Japan. Thus, if one of these giant economies disagrees with a particular amendment, it is very difficult to ask it to withdraw from the WTO. Hence, big players cannot be forced to adopt changes they are not willing to accept voluntarily (Hoekman and Kostecki, 2001).

Second, legislative amendments are likely to be quite rare, as in practice changes to various agreements occur as part of broader multilateral rounds. Third, as a result of these potential difficulties, WTO members decided in 1995 not to apply provisions allowing for a vote in the case of accessions of new members and requests for waivers, but to continue to proceed on the basis of consensus, thus making consensus the tool of decision making (Hoekman and Kostecki, 2001). An interesting example of that is Iran, which has been unsuccessfully trying to join the WTO since 1996 (WTO, Accession: Iran, 2008a). Due to the U.S.' objections, based on consensus, Iran's application was continuously rejected (BBC News, 2001). Only in 2005 did the U.S. agree to Iran's accession talks with the WTO (BBC News, 2005). WTO approval to Iran's membership will not take place on the basis of the two-third majority voting, but on consensus, which means that the approval of the U.S. would be essential.

1.3. Statement of the problem

Despite all the above-mentioned successes that have made the MTS a very well-established system as characterised in its legal and institutional framework, non-discriminatory principles, and decision making process, the MTS has been facing many difficult challenges (Michalopoulos, 2001; Bhagwati, 2002; Messerlin, 2004; Moltke, 2004; and Sutherland, 2005). Increasing workloads on its Secretariat accompanied with

shortage of employees and financial constraints[4] could be seen as posing administrative restrictions on the WTO to deliver what is best for its members (Krueger, 1998, Balckhurst, 1998; Moore, 2001, 2004; Baldwin, 2004). Also, the accusations of the non-governmental organisations (NGOs) about the non-democratic nature of the WTO and its failure to address human rights and environmental issues could be regarded as another obstacle hindering the work of the WTO (Bhagwati, 2002). The violent street demonstrations by different NGOs played a direct role in the failure of the Seattle MC (Gallagher, 2005; Narlikar, 2005). However, the WTO has proven quite capable to address and, somehow, overcome these challenges by improving its administrative capacity and accommodating much of the NGOs concerns and adopting more transparent cooperation with them (Wilkinson, 2006b).

Nevertheless, the continuous conflicts between developed and developing countries over many issues of the DDA causes the most direct and serious challenge facing the MTS (Moore, 2004; Heydon, 2006; Finger, 2007). Developing countries questioned the benefits of the WTO rules, particularly in areas of trade in services and intellectual property rights, which – in their views – exceed the economic and social costs involved in implementing these rules (Landau, 2005) such as higher prices to consumers for important products as medicines (Daz, 1998). The failure of developed countries to appreciate the difficulties that many developing nations were having in implementing existing WTO disciplines (implementation issues) and the pressure they exercised in forcing the so-called "Singapore issues" -- investment, competition policy, transparency in government procurement, and trade facilitation -- were important factors for the very slow progress of the DDA (Sutherland, 2005, Baldwin, 2004, 2006). Also, the protectionist attitude of developed countries, particularly the U.S. and the EU in areas of agriculture and textiles and clothing – where developing countries have hoped to compensate the cost in trade in services and TRIPs, exacerbated the problem for many developing countries (Daz, 1998; Jawara and Aileen, 2004).

Baldwin (2004) argues that the protective stand of the developed countries in agriculture and textiles is likely to continue in the future, thus, further delaying the success of the

[4] Secretariat employees of the WTO are 625 and its budget for 2007 was only 182 million Swiss Francs (WTO, 2008b), whereas the staff of the World Bank are (10,000) employees and of the IMF are 2,716 employees (World Bank, 2007, the IMF, 2007)!

Doha Working Programme. Baldwin contends that this negative stand of developed countries is attributed to their lack of serious planning to adjust their industries to the requirement of the MTS once protective measures are lifted. He, therefore, pessimistically predicts that the elimination of import quotas would continue to be delayed for many years to come. Baldwin also feels that the misuse of the traditional safeguard measures of the WTO (such as restricting imports of a product temporarily to protect a specific domestic industry) could continue to deprive developing countries' meaningful access to the world textiles and clothing as well as agricultural markets. Similar views are held by T. Ademola Oyejide (2004) who expresses his doubts about the ability of the MTS to address the requirements of developing countries, particularly in areas of economic development and reduction of poverty. Oyejide believes that enhanced market access for developing countries will not be enough to ensure successful MTS. The only way to make the system work effectively is by addressing the basic differences in economic conditions between developing and developed countries and establishing ways to overcome them. Oyejide attributes these differences to factors such as: imperfect markets, backward infrastructure and institutions, inadequate information, and technological sluggishness. Overcoming these differences require the removal of supply and production constraints (Oyejide, 2004).

Nevertheless, Jadish Bhagwati (2004) does not share Oyejide's views. Bhagwati describes the claims of developing countries that the world trade system is unfair and that rich countries have pursued protectionist measures against poor countries, as a common misconception that must be addressed and corrected. He argues that the average industrial tariffs are considerably higher in developing countries than developed countries. The former uses anti-dumping actions to protect their domestic firms no less than those used by developed countries. This culture of protectionism in developing countries hurts exports of other developing countries (Bhagwati, 2004). A similar view is presented by Peter Sutherland (2005, p.41) who describes the argument that developing countries have been the *losers* from the MTS as an *exaggeration* and *oversimplification*. Sutherland argues that the WTO provides the framework for the practice of free trade, helps economic reform, and thus provides opportunities for growth, but the rest lies in the hand of member countries. If developing countries do not take the advantage of the MTS and continue to pursue protectionist trade policies, they will never be able to achieve economic prosperity (Sutherland, 2005).

More interestingly, disagreement between developed and developing countries is positively perceived by Ann Krueger (1998, 2005) who argues that it is the advantage of the MTS where all member countries – irrespective of their levels of development - are involved in the process of bargaining through reciprocity and consensus. Although such a process is difficult and rocky given the conflicting interests of different countries, it results in the end in having a system where every participant has something to gain. It is this dilemma of ups and downs and give and take which has kept the MTS alive. Krueger (2005) argues that the history of the MTS has demonstrated its capability of shaping the economic policies of member countries, promoting their growth, and improving their living standards (see also Landau, 2005, for a similar argument). In articulating similar optimistic views, Rorden Wilkinson (2006, p.301) commented that *this has been the pattern of trade rounds since the GATT was first negotiated; there is little reason to suppose that the DDA – or future rounds for that manner – will be any different*. Krueger and Wilkinson's views seem to find much supporting evidence in the history of the MTS. No matter how difficult things appeared to be, negotiations kept continuing from one round to another and from one MC to another, albeit with difficulties.

The history before and after the Uruguay and Doha Rounds speaks for itself. The Uruguay Round took over seven years of very difficult negotiations to conclude, but it was successful in the end. The drama witnessed in Seattle and the setback of Cancun could have resulted in the demise of the MTS. However, the MTS has managed to come back and rehabilitate itself as the most suitable system governing world trade. Hopes were almost lost to achieve any progress on the DDA after Cancun, but the Hong Kong MC has renewed it with a more focusing agenda, the July Package of 2004 (Wilkinson, 2006). Ministers agreed to complete "full modalities" and end export subsidies in agriculture, and eliminate all forms of subsidies for cotton industry (see Appendix 1.2). All of that provides good reasons for holding a more optimistic picture about the future of the validity of the MTS in governing international trade (Wilkinson, 2006; Ismail, 2005). Although the road towards achieving the DDA is still obstructed by many challenges, successful outcomes can be reached as the history of the MTS has previously demonstrated.

Nevertheless, the difficulties facing the Doha Round have led the major economic players such as the EU and the U.S. to pursue preferential trade agreements (PTAs) at an unprecedented pace, a trend that has become to impose another serious challenge to the

validity of the MTS. Through these PTAs, negotiations with developing countries have been conducted more quickly and their markets have been more easily open than is the case under the WTO. These PTAs are structured in line with the EU and the U.S. domestic rules and many developing countries have entered them for different economic as well as political reasons. As a result, the number of PTAs that had been notified to both the GATT and the WTO reached a total of 380 by July 2007 (WTO, Regional Trade Agreements, 2008c). There has been a growing literature to explain the causes of this trend of PTAs to determine trade activities between countries. Also, various views are presented by different scholars on whether the PTAS would help or hinder the development of the MTS (Riezman, 1999, Schultz, 1996, Bhagwati and Panagariya, 1996; Krueger, 1998; Bhagwati, 2002).

Oman is not an exception of this proliferating phenomenon of the PTAs. Despite joining the WTO in November 2000, and after a period of five years only, Oman signed the FTA with the U.S. on January 19, 2006. The FTA is part and parcel of the new U.S. trade policy that aims at signing as many FTAs as possible. As a result, Oman is now a party to two trading regimes, each with different rules and regulations which Oman must abide by. The ultimate issue that this study seeks to explore is whether the FTA is different in nature and applies greater and more complicated arrangements for Oman than the WTO. Hence, it is this particular problem of the small economy of Oman being involved in two different trading approaches; multilateral and bilateral, that this research aims to examine. It is evident from Government's reports on the occasions of joining the WTO and signing the FTA that such differences are not recognised by Oman's policy makers. Although the two trading approaches are different from each other and the FTA applies greater trade commitments on Oman than the WTO, they seem to be equally regarded as part of the Government's policy of trade liberalisation via which economic growth is hoped to be achieved. For instance, in a report on the expected benefits of Oman's membership to the WTO on the national economy, the Ministry of National Economy (MNE) (2001a, pp.1-2) states that:

> The Sultanate -- being a member in this organisation -- will be able to find new markets for its products... the WTO will create new investment opportunities for the Sultanate and allow the national industries to obtain advanced technologies which will result in improving the Sultanate's level of productivity... Therefore, ... this new international system of multilateral trade, which is based on reducing trade barriers and increasing competitiveness, will generate many benefits for the Sultanate.

A similar comment is mentioned in a report issued by the Ministry of Commerce and Industry (2006c) on the occasion of concluding the FTA negotiations with the U.S. which states that:

> The Government of the Sultanate of Oman has embarked upon the endeavour of concluding an FTA with the United States, as a step along its steady policy of openness towards the world economy; and in conformity with the trade and investment liberalization policies (MOCI, 2006c, p.5)

1.4. Aim, objectives, and the significance of the study

The aim of this study is to assess the policy choices facing Oman in trade: the WTO multilateral approach or the FTA bilateral approach. The study seeks, therefore, to critically analyse and evaluate each trading approach in order to find out which approach better suits Oman's trade, offers more flexible arrangements, and provides more opportunities for Oman to express its concerns and address its interests.

The Oman-U.S. FTA is part and parcel of the recently proliferating phenomenon of PTAs. Therefore, as part of its objectives, this study analyses the factors contributing to the prevalence of PTAs globally and investigates whether it would help the mutliateral negotiations of the Doha Round or act as an obstacle against it. The study also diagnoses the U.S. trade policy for the last few years as characterised by its deviation from being a supporter of the multilateral WTO approach to pursuing an alternative bilateral FTAs approach, such as the FTA with Oman. The study further assesses Oman's trade activities in the last two five-year economic plans. Specific focus is provided on the trade relations between Oman and the U.S. with the objective to find out whether "trade" is the main incentive for Oman and the U.S. to sign the FTA between them, or whether there could be other factors that better justify the two countries' endeavour to get involved in such an FTA.

In addition, the research investigates and analyses the actual differences and similarities between the WTO and the FTA legal arrangements in different dimensions that are important for Oman's trade, so that a determination about which of the two trading approaches better suits and serves Oman can be made. Furthermore, the research seeks to disclose the perceptions of people from different spheres of the Omani community; Government ministries, academia, business community, Majlis Al-Shura (Consultative Council), and Majlis Al-Dawla (State Council), about various issues related to Oman's

membership to the WTO and the FTA. These issues include reasons for Oman to become a party to two different trade approaches and the potential costs and benefits that have been, or will be, incurred on Oman as a result of its membership to the WTO and FTA.

The study also intends to measure the participants' perceptions on Oman's negotiating experiences under the two trading approaches. It further explores the opinions of the participants on the extent to which important institutions in Oman such as Majlis Al-Shura, Majlis Al-Dawla, business community, and the academia were, and should be, involved in negotiating or discussing or commenting on Oman's trade agreements before putting them into force. The research seeks to reveal the participants' opinions about the future of the WTO in light of the continuing difficulties facing the Doha Round negotiations. The study simultaneously explores the participants' views on the FTA in light of the changes in the U.S. Administration and the difficulties facing the Middle East Free Trade Area (MEFTA) project that was proposed by President George Bush to conclude by 2013, with particular focus on the implications of such difficulties on Oman's commitments in the two trading approaches.

Moreover, the study gauges the views of those involved in handling trade issues in the Ministry of Commerce and Industry (MOCI) and the Ministry of National Economy (MNE) about the impact of the proliferating phenomenon of PTAs on the WTO and the extent to which the U.S. FTA is fair for Oman. Uncovering their anticipations about the future of Oman's trade in light of the many difficulties challenging its development as mirrored in the dwindling oil and gas productions and the fluctuation of their prices in international market, is also an important objective of the study. The research further seeks to disclose participants' assessments of Oman's trade relations with the U.S. and with three important Asian economic powers; China, Iran, and India. Participants' views on how Oman's trade relations with these Asian powers could be enhanced and utilised to serve Oman's interests are also important for this research to reveal.

In order to achieve the above objectives, there are certain questions which impose themselves in the context of this study. The research has addressed these questions and sought to provide their answers throughout its various chapters. These questions are as following:

- First: why did Oman choose to be a party of two different trading arrangements; the WTO and the FTA with the U.S.?
- Second: under which trading arrangement was Oman better prepared for the negotiations?
- Third: will Oman's commitments under the FTA help its position in the WTO, or further complicate it?
- Fourth, the stakeholders: to what extent were important Omani institutions such as Majlis Al-Shura, Majlis Al-Dawla, the business community, and the academia involved in negotiating, reviewing, and agreeing about Oman's involvement in trade agreements with the WTO and the FTA?
- Fifth: is the U.S. an important trade partner for Oman? Who are the most important partners with whom Oman could trade more effectively? How could Oman improve its trade relations with these partners?

The above-mentioned questions are designed to help the researcher conduct a thorough comparative assessment on Oman's policy choices under the WTO multilateral approach and the FTA bilateral approach. The first question aims to evaluate the reasons that drove Oman to be a party to the WTO and the FTA. This would obviously require studying and evaluating the circumstances under which Oman started pursuing each trading approach. This evaluation is then linked to the second question which seeks to find out how Oman prepared for the negotiations in the WTO and the FTA, and under which of these two trading approaches the negotiations were more difficult. The objective is to determine under which trading approach Oman's negotiating stand was stronger, more effective, and resulted in making commitments that are more useful for Oman.

The third question attempts to analyse Oman's actual commitments in the two trading approaches to find out which of these commitments are more flexible and could better address and serve Oman's interests. As the FTA was signed in January 2006; i.e. after around five years from entering the WTO, it is important to evaluate the extent to which the FTA would support, or hinder, Oman's policy choice in the Doha negotiations. The fourth question investigates the extent to which some important institutions in Oman such as Majlis Al-Shura, Majlis Al-Dawla, the business community, and the academia were involved in negotiating, reviewing, and agreeing about Oman's involvement in the WTO and the FTA. The objective is to determine whether these institutions were given the

opportunity to participate in the Government's policy making by being involved in two different trade approaches.

The final question seeks to examine the significance of the U.S. for Oman's trading activities. It also investigates the main important trading partners with whom Oman's trade should be more enhanced in a way that would help the economic development of Oman, and how the WTO and FTAs could help strengthening the trade relationship with these countries.

In this context, the study seeks to fill a very wide gap in academic research about Oman's integration in the global trading system via the WTO and the FTA with the U.S. To the best of the researcher's knowledge, no previous academic research has been conducted on the implications of the FTA with the U.S. for Oman, or of Oman's WTO membership in this comparative context. There was one previous study of legal aspects of Oman's WTO membership which focused on industry and the banking sector but which did not cover the wider trading context (Al-Khusaibi, 2007). The comprehensive examination of this research and its thorough comparative analysis of the legal arrangements governing different issues and sectors under the WTO multilateral approach and the FTA bilateral approach make it a valuable instrument for policy-making and economic planning in Oman. Whilst the perspective of the study is political economy, it reflects the intimate association between the political economy and commercial law. Thus, the thesis should be useful for anyone interested in learning about Oman's obligations, rights, opportunities, and challenges in the WTO in comparison with those in the FTA, whether Government officials, business people, economic and legal experts, or academic researchers. The study can also be useful for any one who is not a specialist in international trade issues but wish to learn about Oman's involvement in the two trading approaches. The inclusive investigation of this thesis on the FTA and its impact on Oman's membership to the WTO makes it a very valuable piece of work for other countries, particularly those in the Gulf Cooperation Council (GCC), that are, or will be, in the process of negotiating FTAs with the U.S., but still have not signed them. The thesis will enable them to assess their negotiating positions and learn from Oman's experience in the FTA. The study will also enable these countries to forecast how their position in the WTO could be affected as a result of commitments made in the U.S. FTA, thus benefiting from Oman's experience with the two trading approaches.

1.5. Research methodology

In order to achieve the objectives of this research and provide systematic and comprehensive coverage of different relevant issues related to Oman's membership to the WTO and the FTA, the research, based on qualitative methodology, consists of three research methods of data collection. The first is "official documents" where the researcher collects data from the WTO legal texts, declarations of MCs, reports of different committees and working parties, and WTO documents on Oman. These data are compared with parallel data collected from the relevant chapters of the Oman-U.S. FTA. Other data are also collected from documents issued by different Government institutions which contain sections or chapters on Oman's trade activities such as the annual reports of the Ministry of National Economy (MNE), the Central Bank of Oman (CBO), and the Ministry of Commerce and Industry (MOCI).

The data collected from all of these documents and their subsequent analysis are focused on a sample of eight specific areas; namely market access for goods, rules of origin, labour standards, dispute settlement, textiles and clothing, government procurement (GP), telecommunications, and investment. The objective is to determine how each of these areas is addressed under the WTO in comparison with the FTA, and the main implications of the similarities and differences between the two trading approaches on Oman. Some of these areas are chosen either due to their particular importance for the development of Oman such as GP, telecom, and investment. Other areas such as rules or origin, market access, dispute settlement are selected for their ultimate importance for any country involved in international trade agreements. Some other areas such as labour standards, textiles, and GP have been subjects to major controversies between developed and developing WTO members. Thus, their analysis is found very important for this study to determine how Oman is influenced by such controversies under the WTO and how the FTA with the U.S. addresses them.

The second method of data collection is "semi-structured interviews" conducted with employees from different Government institutions, business community, Majlis Al-Shrua (consultative council), Majls Al-Dawla (state council) and academia. The researcher seeks to collect data on a set of important topics related to Oman's membership to the WTO and the FTA. These topics entail; 1) the costs and benefits of Oman's involvement in the WTO and the FTA, 2) Oman's negotiating experience under each trading approach, 3) the future

of the WTO and the MEFTA project, 4) the extent to which important elements of the Omani society such as Majlis Al-Shura, Majlis Al-Dawla, business community, and the academia were involved in negotiating and reviewing free trade agreements, and 5) interviewees' opinions on issues such as labour, environment, and GP that are included in the FTA but not in the WTO.

The third method is two "focus groups" conducted separately with employees from the MOCI and the MNE with the objectives of collecting data on the future of Oman's trade under the WTO and the FTA, particularly when considering the difficulties facing the Doha Round and the political changes in the U.S. Administration. Also, Oman's future trade relations with three important economies, namely China, Iran, and India are considered in the focus groups, as a case can be argued for more geopolitically diversified trade.

The analysis of the data collected from each of the above-mentioned methods is undertaken in two stages. The first stage is content analysis, where the texts, provisions, participants' opinions on various issues are comprehensively analysed, systematically explained, and thoroughly narrated. The second stage is "codification", where the detailed analyses of the first stage for each method are re-produced in a much simpler, but more rigid codified manner, based on common categories that are broken down into other smaller categories.

1.6. The organisation of the study

The thesis is organised in nine chapters, including this introductory chapter. Chapter two reviews the literature on the proliferating phenomenon of the PTAs. The first section of the chapter explains reasons for the prevalence of the PTAs from four different perspectives; institutional, economic, political, and geographical-cultural. The second section reviews the perceptions of different scholars on whether PTAs act as stumbling or building blocs to the WTO.

Chapter three is divided into two main sections; the first explores the nature of the U.S. trade policy in relation to the phenomenon of the PTAs and how this policy has changed from multilateralism to bilateralism from 2001 onwards. Some background on the nature of Jordan and Morocco's FTAs is also provided in forms of appendices to the chapter. This background is very helpful for understanding how the U.S. FTAs model has evolved. The second section provides some background on Oman's trading activities for the period 1995-

2007 and finds that the U.S. is not an important partner for Oman's trade; there are other regional trading partners that are of greater importance for Oman than the U.S., such as the neighbouring UAE, Saudi Arabia, China, Japan, and India. Both Chapters two and three provide the necessary background for the analysis conducted in the subsequent chapters.

Chapter four outlines the methodology of the research by explaining the reasons for adopting a qualitative methodology, describing the research design as a comparative study based on the case of Oman, and illustrating the inductive strategy of the research. The chapter then describes how the data collection process of the research is conducted on the basis of triangulation of three complementary qualitative methods; official documents, semi-structured interviews, and focus groups. This is followed by explaining how the data collected via each method are analysed in two stages; content analysis and codifications.

Chapters five, six, seven, and eight present the findings of the content and codified analyses. Chapter five firstly focuses on the content/textual analysis of the data collected from official documents related to the WTO, the FTA, and Oman's trade and economy on four dimensions; namely market access for goods, rules of origin, dispute settlement, and labour. After that, the findings of chapter five are reproduced in codified categories in the end of the chapter. Chapter six continues the content/textual analysis on four other dimensions: textiles and clothing, government procurement, telecommunications, and investment. The codified analysis on these four areas is provided at the end of the chapter. Results in both chapters five and six generally indicate that WTO arrangements are more flexible for Oman than the FTA and that Oman faces better policy choices under the WTO multilateral approach than the bilateral FTA approach. Chapters seven and eight reveal the results of the narrative/content and codified analyses of the data collected from the semi-structured interviews and the focus groups respectively. Both chapters discover that the FTA was more politically than economically driven. Their main findings generally back up those of chapters five and six that the WTO multilateral approach better serves Oman's interests than the FTA.

Chapter nine is the concluding chapter which recapitulates the main research findings and provides some recommendations for how Oman could improve its interaction with the global economy, particularly in relations to its membership to the WTO. This Chapter also provides some directions for future researches related to Oman's trade agreements.

CHAPTER TWO: PREFERENTIAL TRADE ARRANGEMENTS VERSUS THE MULTILATERAL TRADING SYSTEM: LITERATURE REVIEW

2.1. Introduction

Preferential trade agreements (PTAs)[1] refer to those trade arrangements which provide special preferences to their signatories that are not provided to other external members (Bhagwati, 2002). Thus, by their nature, PTAs require member countries to grant tariff reductions to each other that are not extended to non-members. Hence, they are naturally based on discriminations against non-member countries, which is basically of a direct contradiction to the MFN and NT principles of the multilateral trading system (MTS) (Kennedy, 1996; Krueger, 1998). PTAs can take different sequential forms depending on the degree of integration; namely free trade area, customs union, common market, monetary union, and economic union. Appendix 2.1 explores the nature of each of these forms.

Before the 1990s, the post-war international trade witnessed few PTAs, the limited examples being the European Economic Community – EEC (1957), the U.S. FTA with Israel (1985), and the U.S.-Canada FTA (1987).[2] By being a member to the Gulf Corporation Council (GCC) -- created on May 25, 1981 -- Oman was also involved in regional trade arrangements with other GCC members which evolved during the years from a free trade area to a customs union and then to a common market. However, from the 1990s onwards, the surge of PTAs has accelerated in pace and number, to the extent that all WTO members -- except Mongolia[3] -- are now signatories to one or more PTAs (WTO, Regional Trade Agreements, 2008c). Even Japan which was once distinguished as one of

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[1] It is important to note that terms such as "regional" or "preferential" trade agreements, free trade agreement, free trade area, free trade association, and regional trading blocs are used interchangeably in the literature. They all refer to those trade arrangements outside the conduct of the multilateral trading system, and discrimination is the common criterion of all of them (Kerremans & Switky 2000, pp.4-5). Although some scholars are inclined to use the term "regional" (Hoekman & Kostecki, 2001; Krueger, 1998, pp.7-10), the term "preferential" is preferred by this study. This is because the term "regional" can be misleading as it might be assumed that all parties involved must belong to one particular geographical area (see Lawrence, 1996, p.9), which is not the case for many free trade agreements such as the one between Oman and the U.S. Thus, the term "preferential" is used by this study as it entails broader meanings to cover all trade agreements as they are based on "favourism" and "discrimination", irrespective of the geographical region of signatories. The Oman-U.S. FTA is one form of these PTAs.

[2] The Canada-U.S. FTA was replaced and superseded by the North American Free Trade Agreement (NAFTA), which included Mexico and was put into effect on January 1, 1994.

[3] It is worth-noting that Mongolia and the U.S. signed on July 15, 2004 a bilateral Trade and Investment Framework Agreement (TIFA), but this TIFA has not developed into a comprehensive FTA as the one between the U.S. and Oman.

the very few WTO members that were not involved in any PTA has been caught up by some bilateral agreements of this kind[4] (The Ministry of Foreign Affairs of Japan, 2002). The same applies to the U.S., the once leading supporter of the MTS and the key player for the successful Uruguay Round and the driving force behind the Doha Round, has shown unprecedented enthusiasm to sign PTAs with as many countries as possible. By signing the FTA with the U.S. on January 19, 2006, Oman has also become part of this proliferating phenomenon. Hence, Oman's involvement in the phenomenon of PTAs has shifted from the regional level of the GCC to a remote trade partner where geographical proximity is not relevant. The number of PTAs that had been notified[5] to both the GATT and the WTO reached a total of 380 in July 2007. Of these, 205 are currently in force and many others are believed to be operational although not yet notified. This number is expected to grow further (WTO, 2008c).[6]

Therefore, because the Oman-U.S. FTA is now part of this proliferating phenomenon, it is important to review some of the available literature on why this phenomenon has taken place and how it can affect the MTS to which Oman is also a member. Thus, this chapter is divided into two main sections: the first looks into the main causes of PTAs and the second addresses the conventional question of whether PTAs act as building, or stumbling, blocs to the MTS. This literature review, thus, provides the necessary background for the analysis of the subsequent chapters of the study.

2.2. Explaining the phenomenon of PTAs

Determining the causes of the phenomenon of PTAs is one of the complex issues in the literature (Switky, 2000). Different scholars have pursued different attempts but the task has always remained difficult. This is due to the complexity of the nature of the PTAs themselves, as reasons behind their existence differ from one PTA to another (Schott, 2004; Matsuchita, Schoenbaum, and Mavroidis, 2006). Even for one PTA there can be different reasons for its establishment. This section endavours to take up such a task and attempts to

[4] Japan has bilateral trade agreements with; Chile, Malaysia, Mexico, Philippines, Thailand, and Singapore (WTO, 2008c).
[5] Notification can also refer to the accession of new parties to a PTA that already exists, such as the notification of the accession of Bulgaira and Romania to the EU Customs Union (WTO, 2009b).
[6] According to more recent data published in the WTO website, the number of the PTAs that have been notified to the GATT/WTO up to December 2008 has reached 421 PTAs (WTO, Regional Trade Agreements, 2009a).

explain the phenomenon of PTAs through four different dimensions: institutional, economic, political, and geographical-cultural.

2.2.1. Institutional factors

The increasingly complicated multilateral negotiations on the Doha Development Agenda (DDA) based on single undertaking and the failure of members to meet subsequent deadlines may be seen as the main motives for member countries, particularly developed countries, to seek the bilateral route of PTAs. The failure of the multilateral negotiations to fulfill the interests of developed countries of further liberalisation of trade in services and incorporation of other new areas such as competition policy, investment, labour, environment, and government procurement into the ambit of the WTO legal system is seen as one of the main driving forces for the evolvement of PTAs (Baldwin, 2006; Whalley, 2008). PTAs are regarded as less hampered than MTS negotiations (Chuan, 2004). Trade liberalisation can be achieved much faster under PTAs than the MTS. The comment of the U.S Trade Representative (USTR), Robert Zoellick immediately after the failure of the MC in Cancun that bilateral deals would be sought and the U.S. would not have *to wait for the won't-do countries* (Gallagher, 2005, p.121), indicate the U.S.' lack of trust in the MTS. This was of a different stand to the 1990s - and much before that - when the U.S. was the leading supporter of the MTS (Narlikar, 2005; Feinberg, 2003).[7] As Schultz (1996, p.22) puts it:

> The obvious weakness of the present world trading system, and the tardy progress to change it, provide a good breeding ground for seeking trade liberalisation in regional integration schemes... Thus, doubts have risen about the political will of the major players to strengthen the GATT's credibility. In this context, regionalism has been advocated as an *alternative* [original italic] to multilateralism.

Ironically, this proliferating phenomenon of PTAs that has come to challenge the MTS viability has flourished under the legitimacy of the GATT/WTO (Sampson, 1996). The principal idea is that although PTAs are based on discrimination they are thought to help reduce trade barriers between their signatories, which in turn results in more liberalisation of the global trade (Landau, 2005). Thus, PTAs and MTS would act as complementary elements to each other (Kerremans & Switky, 2000). This is also clearly reflected in the Singapore Ministerial Declaration whose paragraph 7 states that:

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[7] Section one of chapter three of this thesis is dedicated to examine the U.S. trade policy in regard to its deviation from multilateralism to bilateralism.

> We note that trade relations of WTO Members are being increasingly influenced by regional trade agreements, which have expanded vastly in number, scope and coverage. Such initiative can promote further liberalization and may assist least-developed, developing transition economies in integrating into the international trading system (WTO, 1996).

However, as the number of PTAs has continued to grow while the multilateral negotiations have continued to face great difficulties, the optimism of the Singapore MC has changed. Many concerns are now raised about the compatibility of these PTAs with the WTO legal system and their impact on the WTO's viability as the most effective institution governing international trade. As each PTA tends to develop its own trade rules, almost every WTO member, including Oman, has become subject to different trade arrangements applying to different PTA partners. Thus, this phenomenon can *hamper trade flows merely by the costs involved for traders in meeting multiple sets of trade rules* (WTO, 2008c). These concerns were expressed by the WTO Director-General Pascal Lamy in a conference held on this issue in Geneva on September 10, 2007:

> [W]e need to look at the manner in which RTAs operate, and what effects they have on trade opening and on the creation of new economic opportunities... We also need to reflect on whether regionalism is causing harm to multilaterally-based trading relationships (Lamy, 2007).

WTO encouragement to the PTAs proliferation is clearly found in the special legal exemptions from the non-discriminatory principles provided to PTAs in the WTO legal text, namely; Article XXIV of the GATT, the Enabling Clause[8], and Article V of the GATS. Although there are some conditions that have to be met before getting the consent of the WTO to PTAs, the latter have never been challenged or stopped at any time in history (Schott, 2004).

[8] The Enabling Clause is officially termed as the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries" adopted under GATT in 1979. The Clause allows developed members to accord preferential treatment to developing countries. Hence, the Clause acts as the WTO legal basis for the Generalized System of Preferences (GSP), where developed countries offer non-reciprocal preferential treatment (such as zero of low duties on imports) to products originating in developing countries (WTO, Trade and Development Committee, 2006e). Also, the Enabling Clause functions as the legal basis for PTAs on goods amongst developing-countries. Similar to the requirements of Article XXIV, PTAs established under the Enabling Clause shall aim at facilitating and promoting trade among developing countries and shall not lead to increasing obstacles for non-members. Parties to PTAs under the Clause shall be notified to the Committee on Trade and Development (CTD); not the CRTA (WTO, 2006f). Statistics show that 22 PTAs were notified under the Enabling Clause up to July 2007 (WTO, 2008c), which increased to 29 PTAs up to December 2008 (WTO, 2009a).

2.2.1.1. *Article XXIV of the GATT*

Article XXIV.4 seeks to ensure that a PTA results in creating trade and not in diverting it, and that the adverse effects of trade can be reduced to the minimum. Article XXIV outlines some main conditions that have to be implemented so that the GATT will not stand against the formation of a customs union or a free trade area between members. Firstly, as per Article XXIV.5.a,b, trade barriers against non-members should not increase on average after integration. Thus, duties and other barriers against imports from outside a PTA may not be on the whole higher or more restrictive than those before the establishment of the PTA (Pauwelyn, 2007). Thus, this condition attempts to avoid or limit the trade diversion effect of regional integration. Secondly, Article XXIV.5.c requires that any PTA shall include a plan and schedule for its formation *within a reasonable length of time*. Thirdly, as per Article XXIV.8, all types of tariffs and other regulatory obstacles of trade amongst parties to the PTA have to be *substantially* eliminated on all intra-regional exchanges of goods. This condition seeks to ensure that parties to a PTA make all the efforts to demolish barriers and liberalise trade between them, which is the ultimate objective of the WTO (Finger, 1993). Fourthly, Article XXIV.7.a obliges parties that seek to enter in a PTA to *promptly* notify the Council for Trade in Goods (CTG) and provide it with information about the proposed PTA. The CTG then transfers the agreement to the Committee on Regional Trade Agreements (CRTA) to examine whether or not, the agreement comply with the requirements of Article XXIV. Statistics show that out of total of 380 PTAs notified to the GATT/WTO up to July 2007, 300 PTAs were notified under Article XXIV (WTO, 2008c), which further increased to 324 PTAs out of total of 421 PTAs up to December 2008 (WTO, 2009a).[9]

2.2.1.2. *Article V of the GATS*

In addition to Article XXIV and its Understanding, Article V of the GATS allows WTO members to enter into a PTA liberalising trade in services provided that some conditions are met. Firstly, a PTA must have *substantial sectoral coverage* (Article V.1.a), so that no particular mode of supply is excluded. Secondly, a PTA must ensure the absence or elimination of *substantially all discrimination* between the parties to the PTA related to substantial sectoral coverage in terms of the number of sectors, volume of trade affected,

[9] Expressions such as; "*within a reasonable length of time*", "*substantially*", and "*promptly*" were found ambiguous and opened to different interpretations. But, this ambiguity was addressed in the "Understanding on the Interpretation of Article XXIV of the GATT 1994", reached during Uruguay Round (WTO,1995q).

and modes of supply (Article V.1.b,i). This can be achieved via elimination of existing discriminatory measures and prohibition of new or more discriminatory measures amongst the parties to the PTA. The objective, as stated in Article V.4, is to facilitate trade between the parties to the PTA. Thirdly, Article V.4 emphasises that the PTA must not discriminate, nor increase trade obstacles, against non-members. Fourthly, according to Article V.7.a, parties to a PTA are obliged to *promptly notify* their agreement, *or any significant modification of that agreement*,[10] to the Council of Trade in Services (CTS). The latter may decide to pass the notified PTA to the CRTA, but unlike the case of PTAs notified under Article XXIV of the GATT, the CTS examination is optional and not mandatory. Statistics show that out of 380 PTAs notified to the GATT/WTO up to July 2007, 58 PTAs were notified under Article V of the GATS (WTO, 2008c), a number that has increased to 68 PTAs out of total of 421 PTAs up to December 2008 (WTO, 2009a).

But, how does the CRTA deal with PTAs notifications? To what extent has it been successful in examining the notified PTAs? And, what has been done so far to enhance the examination process at the MTS? The following paragraphs address these questions.

2.2.1.3. The Committee on Regional Trade Agreements (CRTA): wide authority but with few achievements

Under GATT 1947, examination of each PTA was conducted by a working party that was established for this purpose and which would decide by consensus whether or not a PTA was consistent with Article XXIV (WTO, 1995c). Any interested contracting party could participate in the working party. However, due to the increasing number of PTAs and the impracticality of establishing individual working parties to examine each PTA separately, the GC established in February 1996 the Committee on Regional Trade Agreements (CRTA), as a single body, responsible for considering the systemic implications of the proliferation of PTAs for the MTS and examining each individual PTA (WTO, 2008q). The examination aims at ensuring the transparency of a PTA and evaluating its consistency with WTO rules. The examination is conducted on the basis of information provided by the parties to the PTA and once concluded it is submitted to the relevant body for adoption: i.e. to the Council for Trade in Goods in cases the PTA was notified under Article XXIV of the GATT, or to the Council for Trade in Services (CTS) if the PTA was notified under Article

[10] Some expressions used in Article V of the GATS such as; "substantial sectoral coverage", "substantially all discrimination", "promptly", "any significant modification" can be subject to different interpretation and need to be addressed by the CRTA (see Matsushita, Schoenbaum, and Mavroidis, 2006, p.579).

V of the GATS. As was the case with the working parties under the GATT 1947, all WTO members can participate in the CRTA whose decisions are reached by consensus. However, if consensus could not be reached, the issue would be referred to the GC (WTO, 2008q).

Nevertheless, the CRTA has never in the history of the GATT/WTO managed to reach a consensus to finalise any decision on the compatibility between PTAs and the provisions of the WTO.[11] There appear to be big controversies among WTO members about the interpretation of the WTO provisions when comparing them with the PTAs under examination (WTO, 2008q). As the Director-General of the WTO Pascal Lamy (2006) puts it; [d]*ifferences between members on how to interpret the criteria for assessing the consistency of RTAs with WTO rules have created a lengthening backlog of uncompleted reports in the Committee.*

Because of these difficulties, the GC issued on December 14, 2006 the "Transparency Mechanism for Regional Trade Agreements" (TMRTA) through which the work of the CRTA has been significantly reformed.[12] The TMRTA urges WTO members involved in PTA's negotiations to endavour to inform the WTO Secretariat about the PTA as early as possible and convey all relevant information including the progress of the negotiations, the PTA's *official name, scope and date of signature, any foreseen time for its entry into force or provisional application, relevant contact points and/or website address, and other relevant unrestricted information* (WTO, 2008r). After the conclusion of the negotiations of the PTA and immediately after ratification by its parties, official notification to the WTO must be made before the start of its implementation. A full text of the PTA, related schedules, annexes and protocols, in one of the WTO official languages (English, French, and Spanish) must be submitted to the WTO*; preferably in an electronically exploitable format* (WTO, 2008s, p.2).

[11] The only single exception was the Agreement between Czech Republic and Slovakia on the occasion of the dissolution of Czechoslovakia (Lamy, 2006).
[12] It is worth noting that the operation of the TMRTA is provisional and can be replaced by a permanent mechanism if agreed so by WTO members.

After the official notification, considerations of the relevant WTO committee[13] about the PTA's consistency with the WTO regulations must be concluded in a period of no more than one year after the date of the notification. The WTO Secretariat must, in consultation with the parties to the PTA, issue a specific timetable for the consideration of the PTA. The parties to the PTA must provide the Secretariat with all the required data (WTO, 2008s).[14] Then, the Secretariat shall prepare a factual presentation about the PTA based on the data provided by its parties. The presentation shall be circulated in all WTO official languages not less than eight weeks in advance of the meeting devoted to the consideration of the PTA. Even after the notification was made, if new changes occurred to the PTA, they have to be notified to Secretariat. Developing and least-developed members shall be, if requested, provided with technical support by the Secretariat in implementing this Transparency Mechanism (WTO, 2008r).

2.2.2. Economic factors

Many policy makers and domestic interest groups hold the views that trading with neighbours is more profitable than trading with others as the transaction costs are lower than getting involved in trade activities with distant countries. The assumption is that national economic welfare is advanced more thoroughly by means of regional co-operation than by multilaterally agreed liberalisation (Chuan, 2004). Welfare gains by PTA members are thought to be achieved more effectively at regional level by re-allocation of factors of production as well as by economies of scale and specialisation and subsequent price reduction (Bonilia et al., 2003). PTAs lead to increased competition, higher investment, and thus higher income in the longer run (Hoekman & Kostecki, 2001). However, these views can be criticised on different grounds. Firstly, determining the economic benefits of PTAs cannot be generalised and requires an assessment of each PTA individually (Matsushita et al., 2006). Secondly, economic benefits of a PTA also depends on factors such as; *the comparative advantages and complementarities of the member countries of the PTA vis-à-vis each other* and their current level of protection in comparison with the new level under PTA (Bonilia et al., 2003, p.679). Thirdly, consideration of factors such as increasing returns, imperfect competition, and technological transfers, are also important for analysing the economic impact of a PTA on its members (Robinson and Thierfelder, 2002). Fourthly,

[13] CRTA in case the PTA was notified under Article XXIV of GATT or Article V of GATS, or the Committee on Trade and Development (CTD) if the PTA was notified under the Enabling Clause.
[14] Data submission must not exceed ten weeks for PTAs involving developed countries, or twenty weeks in the case of developing countries, after the date of the notification

not all PTAs are regional. There are many PTAs where geographical proximity factor does not apply as parties are located in different parts of the world, as is the case of Oman-U.S. FTA.

Bob Switky (2000) attributes the emergence of PTAs to the increasing pressures of global advancement. Individual countries are encouraged to cooperate with each other and form a PTA, so that they can collectively face the international economic and technological challenges. Thus, PTAs may offer states *a safe heaven from global competition* (Switky, 2000, pp.30-31). However, this view is not sufficient enough to explain the driving forces behind all types of PTAs, as some PTAs are signed between very small and powerful economies for other reasons different from escaping the global pressures. Surely, when Oman signed the U.S. FTA it was not escaping from such pressures but embracing them as the FTA contains additional and stricter liberalisation commitments than is the case under the WTO.

Robert Lawrence (1996) presents similar views and adds that PTAs are created to stay, not to be abandoned. They have provided alternative tools to the MTS problems. Economic decisions need not be all made at the multilateral level, but they can be distributed to different levels; multilateral, or regional or bilateral or unilateral. Issues that cannot be agreed about at the multilateral level, they can be accommodated at regional level, or even implemented at bilateral level. Hence, one country or a group of countries can pursue regionalist as well as multilateral strategies at the same time. However, Lawrence (1996) recognises that PTAs could still impose a big challenge to the MTS if they incorporate rules of origin and other anti-dumping and countervailing duties that have protectionist effects. The WTO should act as an overall supervisory body not to allow for such protectionism to take place.

> The major risk in the evolving regional arrangements is that they could implement new forms of protection, not by erecting new tariffs but by implementing rules of origin and administering antidumping and countervailing duties that have protectionist effects... the GATT procedures for overseeing that the rules are implemented need to be strengthened. Members should not be allowed to adopt sector specific rules of origin, and the antidumping rules should be reformed (Lawrence, 1996, p.110).

However, Lawrence's concerns about the incorporations of PTAs of rules of origin and that they can be potentially used as protective measures seem to have now become a reality in today's global trading system. Most PTAs incorporates their own specific rules of origin.

Oman-U.S. FTA, for instance, incorporates a very detailed and complex chapter – chapter four - on rules of origin, as well as other rules of origin that are specifically designed for textiles and clothing products – chapter three. Lawrence's idea that WTO should act as an overall supervisory body to prevent such protectionism seems to be too idealistic due to the continuous conflicts between developed and developing countries, and their inability to reach a coherent set of multilateral rules of origin.

Richard Baldwin (1997, 2006) provides quite different explanations as he argues that the proliferation of PTAs cannot be attributed to the difficulties facing the multilateral negotiations. These negotiations have always been difficult and slow but successful in the end. Baldwin (1997, p.883) also rejects the idea that the U.S. *conversion from devoted multilateralist to ardent regionalist* to be the direct cause of the proliferating PTAs. For Baldwin, the idea that the U.S. has been fully supportive to the MTS is a misconception that needs to be corrected. This is simply because throughout the historical development of the post-war MTS, the U.S. has been open to bilateral-regional trade deals as presented in its Israel FTA and then in the Canada FTA, which then turned into NAFTA after the inclusion of Mexico. Also, Baldwin rejects the views that PTAs have proliferated because regional negotiations are much faster and could yield quicker results.

However, for Baldwin, the real cause behind the speedy trend towards PTAs is the so-called *domino-effect* where non-members find themselves at disadvantages of trade diversion of a particular PTA, which Baldwin describes as an *idiosyncratic event*. Thus, non-members would ultimately seek to avoid further losses by applying for membership to that PTA or, if their application is rejected, by forming their own PTA. Thus, the *idiosyncratic event* of the first PTA which has caused the liberalisation of trade amongst its members, leads other non-members to seek trade liberalisation by attempting to join the PTA or by forming their own PTA. The scenario would repeat itself for other non-members which have stayed out the firstly and the recently established PTA. In order to overcome the cost of trade diversion, they would seek to join one of the already established PTAs or form their own. Hence, the *idiosyncratic events* would be multiplied many times by a *domino effect*. For instance, Baldwin (1997), describes the U.S.-Mexico FTA as the *idiosyncratic event* in the Western Hemisphere. When the negotiations were announced, other neighbouring countries raised their concerns for being placed at disadvantages position due to the preferential access to the U.S. market provided for Mexico's businesses.

As a result, Canada asked to be included in the U.S.-Mexico FTA and NAFTA was established. Similarly, many other Latin American countries signed framework agreements with the U.S. to secure some preferential access to the U.S. market.

Although Baldwin's domino theory provides some explanations about how countries react to the establishment of a particular PTA, it does not give, in my view, sufficient justifications for decisions made by countries such as Oman which signed the FTA with the U.S. without experiencing the pressures of being a non-member of another PTA. On the contrary, Oman was amongst the very first few countries that signed the FTA with the U.S. Hence, the concerns of trade diversion that Baldwin argues for is not applicable to Oman. Moreover, even other countries in the region such as Kuwait, Qatar, and Saudi Arabia have not shown enough interests in following Oman's suit to sign the U.S. FTAs. They do not seem to be concerned about the cost of any trade diversion that might incur on them as a result of Oman's FTA with the U.S. Interestingly, Baldwin (1997, p.884) himself admits that his domino theory cannot provide explanations for all types of PTAs as some *have little to do with economics*. The rest of this section, therefore, examines other possible non-economic factors for the PTAs proliferation.

2.2.3. Political factors

Some scholars suggest that politics can be the driving force behind the establishment of many PTAs and the foundation of trading blocs. Hence, conducting any research on the phenomenon of the PTAs without taking into consideration political variables will be incomplete (Schultz, 1996). One of the political incentives for pursuing regional integration is to encourage economic and political reforms of the newly acceded countries. The collapse of the Soviet hegemony allowed the countries of Eastern Europe and the Baltic to embrace democracy and market-based economic system (Hoekman & Kostecki, 2001). Thus, PTAs with Western Europe countries was regarded as a tool to further accelerate the transitional process to a market economy. The acceptance of membership of Poland, Czech Republic, Cyprus, Slovakia, Malta, and Slovenia in the EU is a clear example of that (EU, 2008). The EU sought to cement the political relationship with these countries via economic means.

Also, a country might seek to join a PTA to enhance its political voice in overall multilateral negotiations (Schultz, 1996). The negotiating stand of some Eastern European

countries at different WTO negotiations has obviously been consolidated since they have officially become members of the EU. Foreign policy and national security considerations are also important factors for any country to seek a regional agreement where similar political as well as economic concerns can be addressed collectively (Hoekman & Kostecki, 2001). The Gulf Cooperation Council (GCC) can be regarded as a good example of this sort of PTA. Furthermore, PTAs between countries of similar institutional structures should be easier than other countries. The EU can be used as an example for that as its member countries are of similar democracies. When other Eastern European countries managed to transform themselves to Western democracies and open market ideology their membership to the EU was accepted (Li, 2000). Also, the fear of being blocked out of a regional PTA can also be a substantial political factor for some countries to be part of such arrangement.

In addition, politicians can be influenced by powerful business groups to follow a particular trading system; bilaterally, regionally, or multilaterally. Helen Milener (1996), therefore, argues that PTAs are used by governments to balance between interests of consumers (voters) and pressures from private businesses. She, hence, distinguishes between two types of firms depending on their economies of scales. If a firm enjoys scale economies it may be able to gain higher profits from a regional trade liberalisation rather than from remaining protected at home or pursuing global trade liberalisation. Hence, the firm will lobby the government to pursue regional trade liberalisation. However, if a firm lacks scale economies it may advocate either domestic protection or multilateral liberalisation, depending on its integration in the global economy. Also, if the firm is exclusively *import-competing*, it should have the interests of being domestically protected but if it is *export-oriented* it should prefer multilateral liberalisation (Milner, 1996). Politicians who seek to be re-elected will have to balance between all these different desires.

In the same token, Mansfield et al., (2008) argue that the type of a PTA that a country chooses to integrate in is influenced very much by the nature of its political regime and the number of the so-called *veto players* within its institutions. *Veto players* are those institutional and partisan actors, who can influence their government's policies. The most important *veto players* are the *selectorate* who can choose the leader and keep them in office. In democratic countries the *selectorate* are those people who are entitled to vote. In non-democracies, the *selectorate* is a much smaller group and often include powerful

elements such as business people, military, labour unions, key members of the ruling party. In both democracies and non-democracies, governments need to maintain the support of the *veto players*. Political leaders in non-democracies are not interested in committing their economies to external trade agreements; as such commitments do not serve the interests of the influential domestic business groups. However, leaders in democracies should be much more interested in joining regional integration agreements than in non-democracies because such agreements support economic growth and serve the interests of the voters. However, Mansfield et al., (2008) recognise that not all democracies are the same. As the number of *veto players* increases, the prospect of entering in a PTA diminishes. This is because the increase in the number of *veto players* will lead to divergence in preferences between them. Some *veto players* will have a constituency that is affected by the PTA and thus, they would seek to stand against it.

However, Mansfield et al. (2008)'s argument that non-democracies are less supportive to PTAs does not seem to be offering a fully convincing political justification to the current proliferating phenomenon of PTAs. Many small authoritarian and monarchical countries enthusiastically seek to negotiate and sign FTAs with developed countries. Oman and Bahrain's pursuance to sign the FTA with the U.S. can be a good example for that. Also, GCC countries are now negotiating different FTAs with China, Australia, Singapore, EU, India, and others. All of these PTAs find no supportive argument in the work of Mansfield et al. The so-called *veto players* in the GCC countries do not seem to have been able to influence their governments not to sign these different PTAs.

Furthermore, the *tie-the-hand*s argument referred to by Switky (2000, p.36) provides another political explanations for the emergence of PTAs. Opposite to the *veto player*s' argument, political leaders in the *tie-the-hands* argument resort to join a PTA to promote their own favourable agenda and introduce policies that might not seem acceptable in the first place at domestic level. Hence, politicians can avoid domestic criticism about adopting certain policies and divert the blame to the PTA obligations. Roland Vaubel (1986) (cited in Switky, 2000, p.36) similarly argues for what he calls the *dirty work* policy where political leaders take advantages of the willingness of international institutions to do any type of work no matters how *unpleasant or unimportant* it is, such as conducting very unpopular economic reforms (like privatisaton or permitting the establishment of a hundred percent foreign owned companies or opening government procurements for foreign

competitors). Thus, politicians will be able to avoid domestic criticism for adopting such reforms by attributing them to the obligations imposed by international institutions.

2.2.4. Geographical – cultural factors

Geographical proximity seems to be a natural variable to the formation of trading blocs (Lawrence, 1996). Transportation costs and the costs of the amount of time spent to deliver goods are the most important variables when analysing PTAs in consideration of geography. In general, transportation costs should be lower if the trading partners are neighbours. However, the advancement of technology and the decline in transportation costs through the advent of air travel and global telecommunications have made geography relatively less important than many decades ago. Thus, there can now be more trade between remote countries than between neighbouring countries. According to Hormats (1994) (cited in Switky, 2000, p.33-34), U.S.' trade with Malaysia, Singapore, and Thailand is higher than with all of South America. Also, as is argued by Lawrence (1996), neighbours may not trust each other and may have more in common with others outside the region.

Cultural similarities are also referred to as facilitators of PTAs. Inglehart et al. (1996) (cited in Switky, 2000, p.38) argue that the foundation of NAFTA can be explained in the context of the interacted attitude and similar cultures shared by the U.S., Canada, and Mexico. NAFTA helped the societies of the three countries to narrow their differences, accept each other's culture, and share similar values on a wide range of issues such as *sexual permissiveness/restrictiveness, respect for authority and individual autonomy, family duty and independence, religion/secularity, and civil permissiveness/order*. The foundation of the Gulf Cooperation Council (GCC) can also find an explanatory ground in this respect as all the six member countries (Oman, Saudi Arabia, United Arab Emirates, Kuwait, Bahrain, and Qatar) share similar cultural aspects; religion (Islam), language (Arabic), tradition and customs. However, cultural variables are still ranked secondary in literature. Economic and political dimensions seem to be more capable of providing a better understanding about the phenomenon of the PTAs than cultural variables (Frankel, 1997, Switky, 2000).

2.3. The impact of the PTAs on the multilateral trading system

Having reviewed the literature on the various causes presented by different scholars of the proliferation of PTAs, this section seeks to investigate the very controversial question on whether PTAs act as a complementing factor to the MTS or as a challenge to it.

2.3.1. Positive views

Contributors such as Larry et al., look at PTAs from liberalisation perspectives (Baldwin, 1997). For them, given the difficulties facing the multilateral negotiations, PTAs are the best alternative tool for achieving faster global liberalisation of trade. PTAs make negotiations easier, quicker, and more manageable (Schott, 2004, Baldwin, 2004). Through gradual enlargement and mergers that are carried out via PTAs, wider scales of liberalisation would be achieved. Given continued protectionist tendencies of WTO members and the cumbersome progress of the multilateral negotiations, PTAs have become essential to facilitate further trade liberalisation in the future. A division of the world into a few blocs would lead to deeper tariffs cuts and to a faster liberalised world trade than the multilateral process (Schott, 2004; Avila, 2003). However, Campa and Sorenson (1996) and Raymond Riezman (1999) assert that the effectiveness of PTAs in fostering further global trade liberalisation depends on their sizes. Small regional blocs can make the approach to a global trade co-operative solution faster and more certain. But the larger the blocs and their market power are, the greater is the temptation to impose restrictions on trade outside the bloc.

A similar view is presented by Carlo Perroni and John Whalley (1994) who indicate that PTAs generally take the form of free trade associations in which member countries can choose their external tariff rates freely. This new phenomenon will not increase the monopoly power of newly established trading blocs nor will it necessarily imply higher external trade barriers between the emerging trading blocs. Thus, PTAs will not be a threat to the MTS. The benefits of accessing larger foreign markets via PTAs are higher for small economies than the sacrifice they make to larger countries in other non-trade agreements such as intellectual property protection and guarantees of royalty arrangements affecting sources on state-owned lands. Likewise, Chuan (2004) argues that although multilateralism is the best option for free trade, other alternative paths such as regionalism and bilateralism will also help liberalising global trade. Their help is of a particular importance at a time when there is no substantial breakthrough in the WTO multilateral negotiations. Thus,

PTAs should be seen as a step forward towards a more successful MTS. The success of a PTA in achieving economic growth will encourage other countries to join the club of PTAs, which will lead to more trade liberalisation in the world.

In providing evidence, Donny Tang (2005) examines whether the free trade areas of North American Free Trade Agreement (NAFTA), Australia-New Zealand Closer Economic Relations (ANZCER), and Association of Southeast Asian Nations (ASEAN), would result in trade creation among the member countries and trade diversion with the non-member countries. Tang argues that the implementations of the free trade areas have facilitated higher trade among the member countries, particularly the ANZCER and ASEAN countries. However, among all three free trade areas, the formation of the ANZCER free trade area has resulted in trade diversion with non-member countries, whereas that of the ASEAN free trade areas has resulted in a trade increase with non-member countries. Tang (2005) argues that the formation of the NAFTA free trade area has no significant effect on trade with non-member countries as their trade flows remain quite low even before its implementation.

Hoekman and Kostecki (2001) assert that a PTA, by definition, involves substantially fewer countries than in a multilateral trading system and some PTAs involve only two countries. This should make PTAs easier to negotiate. The set of possible policy packages that could make all parties better off may well be larger under a PTA; including issues that could not even appear on the negotiating agenda of a multilateral agreement. PTAs may also involve formal mechanisms to transfer income from one region to another, which is difficult to achieve under the multilateral system. Hoekman and Kostecki (2001) argue that the impact of regional integration on both member and non-member countries depends on the degree to which intra-regional trade is liberalised. The more extensive internal liberalisation is, the greater the resulting increase in competition within internal markets. However, while this is welfare-enhancing for member countries, it may also be associated with greater adjustment pressures for inefficient industries located in member countries. As a result, the latter may attempt to shift some of the adjustment burden onto third countries by seeking increases in external barriers and thus, leading to trade discrimination. Hence, regional integration can be harmful to non-members by shifting a way trading activities with them to member countries. In other words, the formation of a trading bloc can lead to trade diversion; i.e. a shift from an efficient outside supplier, whose products and trade

deals are cost effective, to a higher cost regional one, induced merely by the elimination of tariffs on intra-regional trade.

Hoekman and Kostecki (2001) further argue that PTAs can result into greater benefits to its members than the WTO. They use the EU as an example, where there are no tariffs, no safeguard mechanisms, and full binding policies. To a large extent the current bench-mark for good practice in trade policy is the set of policies and rules that apply to the movement of goods, services, labour, and capital inside the EU. However, they argue that this is not the case with non-members of the EU; which may suffer from trade diversion as is explained above. But, PTAs can still be seen as an opportunity for a more successful MTS by using them as experimental laboratories for cooperation between members on issues that have not been addressed multilaterally. If these issues are proven to be successful to incorporate under the PTAs, they can be introduced at a multilateral level.

Jeffery Schott (2001) argues that some U.S. firms have been negatively affected by PTAs that the U.S. was not a member of. The more the U.S stays out of the PTAs phenomenon, the more damage they create for U.S. businesses. Thus, the U.S must join the club of these agreements to avoid additional damages. Schott (2004) further argues that the problem does not lie in the PTAs but in the complexity of the negotiations of the WTO with its wide membership and diverse interests.[15] The difficulty of reaching agreements at the WTO level necessitates the existence of bilateral-regional means of trade initiatives. Schott asserts that PTAs can be beneficial for global trade. They can complement the MTS but this can only be achieved by strengthening the rules of the WTO. Schott proposes the necessity of accelerating the process of revising Article XXIV of GATT and Article V of GATS. However, Schott calls for developing indicative guidelines for rules of origin, which should be kept to minimum level possible, so that they will not be used as protective measures. Schott further suggests that the WTO should adopt a more effective surveillance and scrutinising mechanism on PTAs. Once established, the WTO should regularly examine the extent to which these PTAs act according to its regulations, how they are

[15] More analysis on U.S. preferential trade policy is provided in chapter three.

implemented, and what impact they have on international trade. This process will result in the end in making the PTAs building blocs of the MTS rather than stumbling blocs.

> FTAs are most beneficial if their coverage is comprehensive, if origin rules are kept at a minimum, and if the members are committed to work together to advance MFN trade reforms in the WTO... New WTO rules should be crafted to limit the downside risk for the multilateral system as part of renewed efforts to move the Doha Round towards a successful result... Properly managed, regional pacts can be an important part of the success of, rather than a third-best substitute for, the WTO system (Schott, 2004, pp.18-19)

2.3.2. Negative views

As opposed to the positive views presented above, another school of thought led by Jagdish Bhagwati and Ann Krueger believe that PTAs cause serious challenge to the future success of the MTS. PTAs are by their nature based on protectionism, favouritism to their members, and discrimination against non-members; elements that simply contradict the non-discriminatory principles of the MTS. By no means can PTAs act as complementary elements to the MTS. On the contrary, they cause a threat to its success. The greater their number and the faster their proliferation, the more difficult multilateral negotiations become. Rather than focusing on how to overcome difficulties facing the multilateral negotiations, attentions are diverted to PTAs (Bhagwati and Panagariya, 1996; Krueger, 1999; Bhagwati, 2002).[16] Bhagwati (2002) describes PTAs as a *great mistake* that must be corrected, and as a *pox on the world trading system,* and as a *plague* that have scattered around the globe. He further challenges the idea that PTAs lead to dismantling trade barriers, reductions of tariffs, and help achieve more global free trade. He calls this idea *false economics*. Instead, PTAs create more barriers and make the world trading system more complex with different rules, procedures, and standards to the extent that it has become a *spaghetti-bowl*. Bhagwati (2002, p.232) further describes PTAs as *an inferior policy to the multilateral freeing of trade* because they seek trade diversion rather than trade creation. He heavily criticises the U.S. government for its diversion from the MTS

[16] The differences between the views of the two different schools of thought on whether PTAs help or hinder the MTS are clearly represented in a video debate between Jagdish Bhagwati and Gary Hufbauer conducted on September 13, 2007 and made available in the WTO website http://www.wto.org (WTO. 2008c).

towards bilateral-regional arrangements such as NAFTA and FTAs with other countries around the globe.

Similarly, Anne Krueger (1998) argues that PTAs constitute a potential threat to the world trading system because they are, in general, trade diverting, and lead to formation of new interest groups which oppose the multilateral tariff reductions. Krueger highlights the problems inherent in the proliferation of PTAs. These PTAs; either in Europe, Americas, or Asia work against each other and could in the end raise barriers and undermine global free trade. Krueger contends that differing rules of origin increases the scope for protection and weakens the process of further liberalisation (Krueger, 1998). Krueger (1999) argues that in order to meet the input thresholds of rules of origin requirements, producers in one PTA partner will be encouraged to purchase as many inputs as possible from other partner countries, even if a non-PTA member can produce and sell the inputs more cheaply and even if the tariff rate on inputs from non-PTA producers is zero. Importing inputs from within the PTA to meet the rules of origin threshold allows the producer to sell the final product within the PTA duty free. Under such circumstances imports of inputs are diverted from efficient producers outside the PTA to less efficient producers inside the PTA. Hence, the higher the threshold established in the rules of origin, the greater the chance that trade diversion will take place (Krueger, 1999).

Likewise, Richard Cooper (2004) describes the functions of the PTAs as *bad politics* because they are based on discrimination against non-members and leads to trade diversion. Cooper, however, appears to be optimistic about the future of the multilateral framework, but advises that the U.S. should take a leading role to bring the whole negotiation to a halt. Renato Ruggiero (2004) similarly argues that the argument of those who are in favour of PTAs is unconvincing. Achieving more free trade through PTAs than WTO is a myth. Agriculture will remain a protective area for the EU in its bilateral agreements with other countries. Also, resolving conflicts between a country like the U.S. and China cannot be made better in the Asia Pacific Economic Cooperation (APEC) than in the WTO. Ruggiero expresses his concern about the race for the PTAs between the U.S. and the EU which he terms as *competitive liberalisation* as it will harm the WTO, divert attention and effort from the DDA, and might lead to fragmentation of the MTS instead of achieving free global trade (Ruggiero, 2004, pp.25-30).

In the same token, Siegfried Schultz (1996) asserts that rather than helping the MTS achieve further global trade liberalisation, PTAs carry great risks for becoming a substitute to it in governing the world trade. PTAs lead to distorting effects on the allocation of world resources. They pose a great threat to the MTS viability because they have taken place in weakening MTS conditions. Thus, PTAs act as stumbling blocs to the MTS. Schultz adds that given the concerns that are widely expressed about the MTS effectiveness to face the challenges of conflicting views between its members, many doubts are increasingly expressed about the sincere political willingness of the major players to strengthen the MTS credibility. Schultz further asserts that thorough and successful regional initiatives by major industrial countries – the EC and NAFTA - have created the perception that PTAs are more effective means than the MTS in fostering trade liberalisation. If a country cuts a trade deal with its key trading partners, it will have less interest in MFN reforms in the WTO. This is the case with the highly protective Common Agricultural Policy (CAP) of the EU which has made its members less interested in multilateral agricultural trade reforms. Schultz clearly shares the views of Bhagwati and Krueger on the trade diversion effect of the PTAs. He further contends that PTAs may induce non-members who suffer from the impact of trade diversion to take retaliatory actions by adopting a PTA among themselves so as to offset their loss of markets and strengthen their bargaining power. This process of competitive bilateral-regionalism will undermine the MTS and turn the world into a theater of a war trade similar to that witnessed in the 1930s. Weaker countries will be the victims of such consequences.

> FTAs are by definition discriminatory. They affect the multilateral system … they could lead to retaliatory actions or even to trade wars. Larger countries or blocs could start off trade wars at the expense of small countries. As a consequence, one would have to resist them on the argument that regional negotiations will lead to a weaker set of multilateral trade institutions and will produce exclusive and inefficient solutions (Schultz, 1996, p.30).

Martha Hailu (2006) shares the view of Schultz that PTAs act more as stumbling blocs to the multilateral arrangements. This is because countries' incentives to the MTS are eroded by the benefits achieved at the regional level. Hailu supports her views by following the historical development of the trade relationship between the African, Caribbean and Pacific countries (ACP) and the EC. Throughout this development not only the non-discriminatory principle of the MTS was not accommodated by the sequential preferential agreements between both sides but even the special requirements of Article XXIV and the Enabling Clause of 1979 were never fulfilled. This preferential relationship has demonstrated how

PTAs can create complexity for the MTS. It goes back to the Treaty of Rome establishing the European Economic Community (EEC) in 1957, whose members expressed solidarity with the colonies and overseas countries and territories with the aim to contribute to their prosperity (Hailu, 2006). Then, the Treaty of Rome's commitment was translated in different sequential agreements between the EC and the ACP countries; starting from Younde I to Lome IV[17]. All these agreements were based on discrimination and non-reciprocal principles because the EC was granting a very favourable market access to products coming from ACP countries, that other non-member countries were not granted. The ACP countries were not required to grant equivalent concessions to European exporters. These preferences became very noticeable in the so-called banana protocol which ensured duty free entry of a specific quota of bananas from the ACP countries to the EU market (Hailu, 2006). As this special privilege was not extended to Latin America or dollar-zone producers, they were frustrated and resorted to the DSU to settle the issue. It was found that Lome treaties contravened with the exceptions provided in Article XXIV of GATT and with the Enabling Clause of 1979 because the preferences that were given for ACP countries were not extended to all developing countries and they were not reciprocal.

As a result, a special waiver from WTO's legal requirements was provided to ACP countries (Hailu, 2006). This waiver as well as the Lome IV convention expired in February 2000. Then, both sides - the ACP and EU - signed another preferential agreement on June 23, 2000 called the Contonou Partnership Agreement (CPA), whose incompatibility with the WTO requirements was again exempted in the Doha Ministerial Declaration until December 31, 2007. Meanwhile, both sides agreed to negotiate a new Economic Partnership Agreement (EPA). The new EPA shall constitute a change of the preferential market access the ACP countries used to enjoy almost half a century into a reciprocal trade relation that will be compatible with the WTO rules. The issues addressed in the EPA negotiations are, among other things, trade in goods, liberalisation of the service sector and trade related issues such as competition policy, investment, government procurement (Singapore issues), as well as trade and environment and trade and labour standards. Hailu (2006) describes the introduction of the Singapore issues to EPA

[17] The first two agreements were the Yaounde I and II between the EC and French speaking countries in 1963 and 1969 respectively. With the U.K membership to the EC in 1973, a wider agreement was signed in 1975 called Lome I which also included many Anglophone African countries. Lome I was replaced by Lome II, III and IV every five years. Each agreement had five year life span, except for Lome IV, which was drawn for a period of ten years (Hailu, 2006).

negotiations as *bringing dead issues into life again*, as they had been dropped from the WTO agenda after failure of reaching consensus. Hailu warns that the incorporation of the Singapore issues into the EPA will weaken their bargaining position in the WTO, which will result into *WTO plus commitment* (Hailu, 2006).

In a similar manner, Alice Landau (2005) asserts that PTAs can have a negative impact on developing countries. The General System of Preferences (GSP), or other types of advantages obtained by the Lome Agreement, has never played a major part in improving the export structure of the ACP countries. The share of EU imports of manufactured and non-manufactured products from the ACP did not stop falling since the creation of the Lome Agreement; declining from 6.7 percent in 1976 to 3.1 percent in 1993 (Landau, 2005).

John Avila (2003), as many other contributors, sees the trend towards PTAs as a deviation from the MTS. The slow progress in the WTO negotiations is the driving factor for accelerating the process of PTAs, which is now regarded as an alternative route to trade liberalisation. For Avila, the speedy trend of the PTAs has profound implications on the global trading system, in general and on Asia-Europe relations in particular. Avila advises that both Europe and Asia should stay supportive to the MTS. Avila argues that the enlargement of Europe to incorporate countries of east central Europe has a negative impact on Asian economies. Before the enlargement, Europe was already confined to itself and about 55 percent of its trade takes place between its members; thus, negatively affecting non-members. Since 1989 the EU has become the most important trading partner with the eastern central European countries accounting around 60 percent (Avila, 2003). As a result of the enlargement, this intra-EU trade would further increase as preferential access to the countries of east central Europe would be granted. Thus, Avila predicts that Asian products would suffer from a competitive disadvantage vis-à-vis the countries of east central Europe.

However, such an impact would be determined by the shape and the scope that the phenomenon of the PTAs will take place in Asia. The continuation of the PTAs trend in Asia would lead in the end to the establishment of an East Asian Free Trade Area (EAFTA), covering countries of Northeast and Southeast Asia. The EAFTA would be comparable with *EU enlargement in size if not in scope* (Avila, 2003, p.217) and would

become the world's largest trading group after the EU. The population of the proposed EAFTA would reach over 1.5 billion people with accumulated GDP of approximately US$6 trillion. EAFTA would *represent around 21.3 percent of global merchandise exports and about half of the world's high tech exports and two-fifths of the exports of textiles and clothing* (Avila, 2003, p.217).

Nevertheless, unlike in Europe where intra-trade is expected to increase further with the enlargement, thus leading to trade diversion, Avila argues that trade diversion is less clear in Asia. This is because most Asian countries still have a high degree of dependence on external markets, capital, and technology. The extra-regional countries account for almost 60 percent of its total trade. The EU and the U.S. are still the major trading partners and the sources of foreign direct investment for many Asian countries. Thus, the PTAs trend in Asia is unlikely to have a big impact on the EU countries or the U.S. However, it is more likely that other non-member Asian countries will be more negatively affected, given the fact that the Asian trade activities are more outwards towards the EU and the U.S. Avilla advises that both Europe and Asia should remain outward oriented and avoid protectionist tendencies to ensure that they do not become stumbling blocs to multilateral trade liberalisation, so that they avoid developing themselves into "*inward-looking discriminatory blocs*" (Avila, 2003, p.222).

A similar study on the impact of European enlargement on Asian countries is made by Ludo Cuyvers (1997) who also finds that the members of the Association of Southeast Asian Nations (ASEAN) would be negatively affected by the enlargement of Europe. The latter would result into trade diversion away from Asian products which would have severe competitiveness from the new EU members. Asian exports that would suffer more are; agriculture, fishery, textiles and clothing, and technology-intensive products. Cuyvers (1997) argues that in a situation of direct competition among similar products on EU markets -- particularly in labour intensive goods -- the new central eastern European countries will have an advantage because of their membership in the EU. This is because they possess a relatively well-educated labour force that is available at comparatively low labour costs. At the same time, a redirection of investment capital would take place attracted by commercial opportunities in prospective member states. This would have its impact on investment flows to Asian countries (Cuyvers, 1997).

Kenneth Shadlen (2005) analyses the developmental trade-offs involved in multilateral versus regional–bilateral strategies of integration into the international economy. Shadlen makes a comparison between the regulations that guide policy in the areas of trade, investment, and intellectual property of the WTO and in PTAs between the U.S. and developing countries. Shadlen finds that both strategies of integration – the MTS and PTAs - feature similar trade-offs for developing countries. The latter benefit from increased market access and opportunities for specialisation but that takes place at the expense of losing some control over economic domestic policy. However, the trade-offs are intensified in the case of the PTAs. Although countries receive more market access, they in exchange make significantly deeper concessions regarding the management of inward investment and intellectual property. Shadlen further argues that countries whose trade policies are guided by the WTO have more flexible scope to adopt their industrial strategies and maneuver their policies to change comparative advantages to their favour, but under the PTAs such a choice is greatly circumscribed (Shadlen, 2005, p.751).

2.4. Conclusion

Many contributors in the field attribute the accelerating trend of the PTAs for the last two decades to the different challenges facing the MTS and to the latter's inability to move forward with the DDA negotiations. But, they widely differ about whether PTAs would help the MTS overcome its problems or further complicate them. The researcher personally share the pessimistic views of scholars such as Bhagwati and Krueger who believe that PTAs will further complicate the MTS problems; and, if they continue proliferating, they would cause serious threat to its viability as the best system governing international trade. International trade might in the end find itself to be governed by PTAs which would then drag the world in competitive protectionism in a similar way that was witnessed before the WWII. The real problem lies in the fact that PTAs are – by their nature – based on discrimination against other non-members and this nature can never change; thus always entailing the potential of creating tensions between members and non-members. Thus, PTAs can never lead to MTS success.

Big economies such as the EU and the U.S. are themselves the cause of many problems of the MTS due to their stubborn protectionist policies particularly on agriculture and textiles and clothing. Unless such policies change substantially, the problems of the MTS will

continue. Developing countries will not agree to make new commitments on Singapore issues, unless their issues of concerns on agriculture, textiles and clothing, as well as those related to the so-called implementation issues are addressed. Unfortunately, instead of focusing on resolving the MTS problems as was the case in the Uruguay Round, developed countries have opted for an easy exist from the MTS by adopting bilateral-regional means. These means appear very attractive for developed countries as they enable them not to make any new commitments on areas of their protections while at the same time allow them to incorporate areas of their interests such as government procurement, competition, investment, labour, and environment that they could not get them through the MTS in the first place. However, for a small country such as Oman, these preferential means have made Oman's trade relations with other partners very complicated as these relations are now subject to different arrangements; the WTO, U.S. FTA, as well as those of the GCC. Oman must adapt itself to all of these different trade regulations. Therefore, the MTS is now under serious danger of being replaced by a new trading system based on favouritism, protectionism, and discriminations. This danger will continue and become even worse if big economies continue their easy ways out from the MTS towards more PTAs.

CHAPTER THREE: AN ANALYSIS OF THE UNITED STATES' PREFERENTIAL TRADE POLICY AND OMAN'S TRADING ACTIVITIES

3.1. Introduction

Having reviewed the literature on the main causes of the proliferation of the preferential trade agreements (PTAs) and explored the different views on whether PTAs help or hinder the multilateral trading system (MTS), this chapter studies the trade policies and activities of the two parties of the FTA; Oman and the U.S. Section one looks into the U.S. trade policy and examines reasons for the unprecedented U.S. enthusiasm to the PTAs, a deviation that has posed serious questions to the viability of the MTS as the best system governing international trade. The study also examines the main factors that determine the U.S. selection of its FTAs' partners with specific focus on the Middle East Free Trade Area (MEFTA) project that was announced by President George Bush in 2003 to be completed by 2013, and of which the Oman-U.S. FTA is a part. Section two looks into Oman's trading activities for the period (1995-2006) with a specific focus on the sixth five-year development plan (2001-2005) during which Oman deviated from the WTO and sought to be a party to a different trading approach based on discrimination and preference: the U.S. FTA. The analysis in this chapter particularly focuses on the main components of Oman's trade sector, its main trading partners in each component. In addition, the chapter aims at finding out whether the U.S. has been a major trading partner for Oman, so that the FTA can be justified.

3.2. U.S. preferential trade policy

3.2.1. The shift from multilateralism to preferentialism

The U.S. strong adherence to the MTS was one of the main reasons for its success (Krueger, 1999). Despite the difficulties faced the MTS from the failure of the ITO project to the very long Uruguay Round, the U.S. leading role was essential in helping the MTS overcome these difficulties and making it the most efficient system governing international trade (Gallagher, 2005; Bradford, Grieco, and Hufbauer, 2006). Even after the setback of Seattle, the U.S. leading role helped the MTS overcome its problems and reach the very comprehensive Doha Development Agenda (DDA) (Wilkinson, 2006b). However, the U.S. post-Doha MC evident deviation from the route of multilateralism towards PTAs, as presented in table (3.1), has jeopardised the viability of the MTS (Bhagwati, 2002; Cooper, 2004; Ruggiero, 2004). The U.S. strong adherence to preferentialism ultimately means that

the U.S. has been pursuing different trading arrangements from the MTS. This poses serious questions about the U.S. sincerity to help the MTS overcome the difficulties facing the DDA negotiations (Feinberg, 2003). As Gary Hufbauer (2006) comments: *I think if the Bush team had placed Doha higher on its agenda, we would be much closer to completion now, instead of what looks like a frustrating end game.*

Table (3.1): Examples of U.S. FTAs negotiated by Bush Administration

Trading partners	Starting date of negotiations	Conclusion of negotiations	Duration of negotiations	Signature of agreement	Enforcement date
Singapore	4 December 2000	15 January 2003	Around 25 months	6 May 2003	1 January 2004
Chile	7 December 2000	11 December 2002	24 months	6 June 2003	1 January 2004
Dominican Republic-Central America [1]	8 January 2003	17 December 2003	Around 12 months	28 May 2004	1March 2006
Morocco	21 January 2003	2 March 2004	Around 13 months	15 June 2004	1 January 2006
South African Customs Union - SACU[2]	2 June 2003	Abandoned in April 2006	----------	----------	----------
Australia	17 March 2003	8 February 2004	Around 12 months	18 May 2004	1 January 2005
Bahrain	26 January 2004	27 May 2004	4 Months	14 September 2004	1 August 2006
Panama	26 April 2004	19 December 2006	Around 32 months	28 June 2007	Not yet
Colombia	18 May 2004	27 February 2006	Around 21 months	22 November 2006	Not yet
Ecuador	18 May 2004	Suspended by U.S.[3]	-----	------	------
Peru	18 May 2004	7 December 2005	Around 16 months	12 April 2007	1 February 2009
Thailand	July 2004	Suspended [4]	-----	-----	-----
UAE	08 March 2005	Ongoing	-----	------	-----
Oman	12 March 2005	3 October 2005	7 months	19 January 2006	1 January 2009
Republic of Korea	5 June 2006	2 April 2007	9 months	30 June 2007	Not yet
Malaysia	12 June 2006	Ongoing	-----	-----	----

Source: Evenette and Meier, 2008, p.45 (updated by the author).

[1] The Dominican Republic – Central America Free Trade Agreement is known as DR-CAFTA and encompasses the U.S. and the Central American Countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, and Dominican Republic.
[2] SACU consists of Botswana, Lesotho, Namibia, South Africa, and Swaziland.
[3] This was in response to Ecuador's decision to cancel an oil contract with the U.S.-based oil company, Occidental Petroleum (Inside U.S. Trade, 19 May 2006).
[4] Negotiations took many rounds but then suspended in the wake of the military-led coup in September 2006 and changes in Thai government and parliament (Oana, 2006).

Many U.S. trade officials like to argue that the U.S. preferential trade policy would help the MTS overcome its difficulties and accelerate global trade liberalisation, which is the ultimate objective of the WTO. They contend that both trading approaches complement each other. As the WTO has been facing big challenges and unable to move forward, the U.S. would seek bilateral means to open the goods, services, and government procurements markets of its trading partners and oblige them to abide by the U.S. designed strict labour and environmental regulations. The more of these U.S. designed PTAs are in place, the easier they would be acceptable in the multilateral negotiations (Congressional Budget Office, 2003). Also, bilateral means increase pressures on other big trade players such as the EU and Japan, which have deviated from the MTS and been involved in different PTAs around the globe, to go back to the multilateral negotiating table. As the U.S Trade Representative, Robert Zoellick (2001d, p.4) comments:

> Indeed, the United States will be pursuing a number of regional free trade agreements in the years ahead, although not to the exclusion of global talks and the WTO process. The fact that the United States can move on multiple fronts increases our leverage in the global round, just as the Clinton Administration used to the North American Free Trade Agreement and the APEC summit to help squeeze the European Union to complete the Uruguay Round of GATT.

However, are the rehabilitations of the MTS the real and ultimate aim of the U.S. in pursuing PTAs? Unfortunately, the available evidence does not support a positive answer. The MTS has been facing difficulties throughout its history and the U.S. was the driving force for its success, without having to get involved in a "spaggatti-bowl" of PTAs (Bhagwati, 2002). The long-lasting Uruguay Round was full of difficulties and challenges (Wilkinson, 2006b), but the U.S had only two PTAs: with Israel and NAFTA. After the establishment of the WTO, multilateral negotiations at Singapore, Geneva, and Seattle MCs proved to be very difficult as evidenced in the strong disagreements between WTO members on many issues; services, labour, environment, GP, agriculture, and textiles. But, despite these difficulties, the MTS survived.

The U.S.' leading role was essential to reach a successful Doha MC and agree on the comprehensive DDA. Thus, there is no reason now to believe that PTAs are an inevitable tool that must be resorted to in order to increase pressures on others to go back to the multilateral negotiations. On the contrary, the opposite seems to have been taking place. Rather than pressurising other players to go back to the multilateral negotiating table, the U.S. itself seems to have been influenced by the flood of PTAs of other trading players. The U.S. feared that it would be marginalised from the world markets if it continued to stay out of the game of the

PTAs that other big players such as the EU and Japan have been involved in (Schott, 2001a,b). Schott (2001a,b, 2004) argues that the longer the U.S. stays out of these PTAs the more harm and damage would be caused to U.S. businesses. By being non-members, U.S. exports suffer from discriminatory treatment in foreign markets compared to producers from other PTAs members. Also, when the U.S. is not a party to a negotiation and agreement, it can not influence the outcome of that agreement. The U.S. ability to advance its interests in the regions of these PTAs will be less restricted if it becomes a party to them. Also, PTAs are based on special and complicated trade rules, such as rules of origins which increase transaction costs for the U.S. firms. Thus, the longer the U.S. stays out of the PTAs, the more likely it loses opportunity to expand economic ties with trading partners which in turn affects U.S. businesses. Hence, it is the pressure of being discriminatingly marginalised in international markets by PTAs of other players is what has driven the U.S. to deviate form multilateralism to preferentialism.

Rather than exercising pressures on other trade players to go back to the multilateral trade negotiations, the U.S. followed suit and sought to dominate global markets via its own designed PTAs. Thus, the U.S. objective behind its indulgence in PTAs does not seem to help multilateral negotiations but rather to catch up with the phenomenon of the PTAs so that U.S. businesses will not continue to suffer from the discrimination of other PTAs (Arnold, B. 2003). As Robert Zoellick (2001d, p.4) puts it; *America's absence from the proliferation of trade accords hurts our exporters...If other countries go ahead with free trade agreements and the United States does not, we must blame ourselves. We have to get back into the game and take the lead.* With the U.S. drift towards PTAs and with its trade bureaucrats becoming much busier preparing and negotiating a flood of FTAs, hopes for the revival of MTS are low. This U.S. drift would likely result in creating competing trading blocs; *the U.S. and the Western Hemisphere, the EU and nearby countries, and Japan and its trading partners in Asia and the Pacific Rim – a result that would be inferior to multilateral free trade* (Arnold, B. 2003), and would potentially be leading to a war trade (Bhagwati, 2002).

3.2.2. A multiple agenda of interests

Besides seeking to overcome discrimination of other PTAs and regain competitive grounds for its exports and businesses in international markets, the U.S. has sought to utilise its PTAs to achieve other economic, political, and social interests (Evenett and Meier, 2008). Richard Feinberg (2003) summarises these interests in five categories; 1) encouraging democratic

reforms of the trading partners, 2) supporting their economic liberal changes, 3) consolidating political and security ties with strategic allies, 4) creating models that can serve as *catalysts for wider trade agreements*, and 5) accelerating region-wide commercial liberalisation by allying with a regional leader. Hence, each U.S. FTA can be explained through some or all of these interests. For instance, the inclusion of Mexico in NAFTA, as justified by Feinberg (2003), can be seen to serve all the five categories of U.S. interests. NAFTA rewarded and helped Mexico's transition to democracy and cemented its economic reforms; i.e. the first and second category. NAFTA also consolidated the security ties with Mexico that is evidenced in its inclusion in the Northern Command Security Perimeter, which is the third category. In addition, NAFTA has established a template for the wider project of Free Trade Agreement of America, and will act as a building bloc for this promised regional trading accord; thus reflecting the U.S. interests of the fourth and fifth category. Table (3.2) summarises Feinberg's views on the U.S. interests behind negotiating different FTAs. The analysis now shifts gear to look specifically at George Bush's proposal of the Middle East Free Trade Area (MEFTA), of which Oman-U.S. FTA is a part.

Table (3.2): U.S. interests from FTAs with other countries

Country/ region	Democratic Regime (1)	Economic Reform (2)	Security Interests (3)	Trade Policy Precedents (4)	Regional Leader (5)
Canada	Yes	Yes	Yes	Yes	No
Mexico	Transitional	Yes	Yes	Yes	Yes
Chile	Yes	Yes	No	Yes	Yes
Singapore	No	Yes	Yes	Yes	Yes
Central America	Yes	Mixed	Yes	TBD	No
Australia	Yes	Yes	Yes	TBD	No
FTAA	Yes	Mixed	Yes	TBD	NA
APEC	Mixed	Mixed	Yes	Yes	NA
Israel	Yes	Yes	Yes	Yes	No
Jordan	Yes	Mixed	Yes	Yes	No
SACU	Yes	Mixed	Yes	TBD	Yes
Morocco	No	Yes	Yes	TBD	No

Source: Feinberg (2003, p.1028)

1. Democratic political institutions in place or in progress at time of trade accord.
2. Significant market-oriented economic reforms in place or in progress at time of trade accord.
3. Long-standing U.S. security interests.
4. Whether the trade accord established precedents, in such areas as services, investment, labour and the environment that the U.S. could use as templates for future trade negotiations
5. Whether the country carried weight, because of its prestige or economic size, in its region.

(TBD= To Be Determined; NA= Not Applicable)

3.3. The project of the Middle East Free Trade Area (MEFTA)

3.3.1. Non-economic factors

After the September 11, 2001 terrorist attacks on the U.S. World Trade Centre and the Pentagon, concerns about what causes terrorism and how to overcome it have dominated the

arenas of the U.S. policy making. FTAs with Muslim countries were proposed to act as helpful means of fighting terrorism, which marked a new element in Bush's political and economic thinking (Lindsey, 2003). This policy has reflected the continuos historical strong links between the U.S. foreign policy and its trade policy (Feinberg, 2003). During the cold war, the U.S. supported open-market trade agreements and tolerated the creation of the European Community for the political purposes of curbing communism. After September 2001, FTAs are seen by the U.S. as an effective tool through which Muslim nations can be more integrated into the global economic system, their poverty and economic backwardness can be overcome, and Islamic extremist ideology can be dissolved (Bolle, 2006, Lindsey, 2003). By removing trade obstacles to exports from Muslim countries and convincing these countries to open their markets for foreign competition, a new culture of liberalism and market growth will take place (Bolle, 2006; Blustein, 2004). Then, the growth of economic powers beyond state control would lead to a wider distribution of political power (Lindsey, 2003). Edward Gresser (2003) argues that the Muslim world had been the *blank spot* on the U.S. trade agenda as trade between both sides was very low, which undermines the U.S. war against terrorism. Gresser suggests that a strategic trade programme with Muslim countries can effectively help achieving the U.S. objective of fighting terrorism. The 9/11 Commission Report (2004) affirms this idea of linking trade liberalisation to the strategy of fighting terrorism and emphasises that economic openness leads to cooperation between nations and exchanging ideas across their different cultures. Thus, the Commission supports Bush's idea of establishing a U.S.-Middle East Free Trade Area (MEFTA) by the year 2013, through which Muslim countries can become full participants in the world trading system.

> Economic openness is essential... when people lose hope, when societies break down, when countries fragment, the breeding grounds for terrorism are created. Backward economic policies and repressive political regimes slip into societies that are without hope... Commerce, especially international commerce, requires ongoing cooperation and compromise, the exchange of ideas across cultures, and the peaceful resolution of differences through negotiation or the rule of law (The 9/11 Commission Report, 2004, p.378).

The MEFTA is planned to consist of 20 countries that are referred to as the Middle East/North Africa. As appendix (3.1) shows, sixteen of these countries are located in the Middle East, namely: Bahrain, Cyprus, Egypt, the Gaza strip/ West Bank, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen. The other four are in North Africa; Algeria, Libya, Morocco, and Tunisia (Bolle, 2006). Besides being prepared to liberalise their economies, one of the most essential requirements of the MEFTA is

that all the countries involved must not participate in any kind of boycott against Israel (Cooper, 2006).

Each of the above-mentioned countries is included in the MEFTA for different political and economic reasons. For instance, using Feinberg's five-category model, Iran seems to be included mainly for U.S. security reason, which is category three. The U.S. perceives the current Iranian regime as a serious threat to its strategic interests of securing oil supply from the Gulf region. This perception is clearly reflected in the U.S. intolerance with Iran over its nuclear programme and the U.S. endeavour to reform the Iranian political system into a Western democratic one. Thus, it is not the economic interests and free trade reforms -- category two -- but rather, the strategic security interests of the U.S. in the region are what could justify the inclusion of Iran in the MEFTA project.

Table (3.2) below explores the researcher's view about the different U.S. interests behind the inclusion of each country in the MEFTA using Feinberg's model. Noticeably, for each MEFTA country there are different security interests for the U.S. to achieve. For instance, U.S security interests behind including the six Gulf countries in the MEFTA project are related to the strategic importance of these countries for international economy as they account for 43.5 percent of proven world oil reserves and their production of crude oil and liquefied natural gas account for 21.5 percent of global production, as was the case in 2003 (OAPEC, 2007). The report of the U.S. National Energy Policy Development Group (NEPDG), released in May 2001, estimates that over the next 20 years U.S. consumption of oil and gas would increase by 33 percent and 40 percent receptively (NEPDG, 2001, p.x). Thus, the U.S. would continue to perceive the GCC countries as important sources for its demands of oil and gas (Gause, 2004). Hence, signing FTAs with GCC countries would further strengthen their ties with the U.S. and consolidate U.S. businesses' accessibility to their markets particularly in oil and gas sectors. For the part of countries such as Israel, Egypt, Jordan, and Gaza strip and West Bank, the U.S. security interests mainly lie in the protection of Israel, consolidating the already agreed peace agreements such as the 1979 Camp David Accords, helping Israel further integrate with its neighbours and in the region as a whole, and assisting the rehabilitation of the peace process via trade means. Also, the U.S. has other different economic and democratic interests to achieve from signing FTAs with the MEFTA countries, but these interests do not necessarily apply to all MEFTA countries as demonstrated in table (3.3).

Table (3.3): U.S. interests from FTAs with MEFTA countries

Country/ region	Democratic Regime	Economic Reform	Security Interests	Trade Policy Precedents	Regional Leader
Bahrain	No	Yes	Yes	Yes	No
Cyprus	Not clear	Yes	Yes	Not clear	No
Egypt	No	Yes	Yes	Yes	Yes
Gaza strip/West Bank	Yes	No	Yes	No	No
Iran	Yes	Maybe	Yes	No	Yes
Iraq	Yes	Yes	Yes	No	Not clear
Israel	Yes	Yes	Yes	Yes	No
Jordan	Yes	Yes	Yes	Yes	No
Kuwait	Yes	Yes	Yes	Yes	No
Lebanon	Yes	Yes	Yes	No	No
Oman[5]	Maybe	Yes	Yes	Yes	No
Qatar	No	Yes	Yes	Yes	No
Saudi Arabia	No	Yes	Yes	Not clear	Yes
Syria	No	No	Yes	No	No
UAE	No	Yes	Yes	No	No
Yemen	Maybe	No	Yes	No	No
Algeria	Maybe	No	Yes	No	No
Libya	No	No	Yes	No	No
Morocco	No	Yes	Yes	Yes	Maybe
Tunisia	No	Yes	Yes	Yes	Maybe

Source: Complied by the author (2008).

Nevertheless, the U.S. promises of achieving economic growth and prosperity via the FTAs and the MEFTA are met with high suspicion by many scholars in the Arab world. It is widely believed that the whole idea of the MEFTA is mainly designed to help Israel integrate in the Arab world, so that it will not continue to suffer from the Arab boycott. The precondition of the MEFTA of stopping any boycott against Israel is a clear indication for that (Al-Jawahri, 2003). Some contributors further argue that the whole project is no more than a new way of imperialism through which the U.S. – with the help of Israel - would be able to dominate the political and economic destinies of these countries (Garrar, 2001), and thus would enable the U.S. to protect its security interests in the region.

> The most important condition for the establishment of the MEFTA is for the Arab countries to end the war status with Israel, accompanied with official and full recognition of its sovereignty, and accepting it as a partner in the region. In light of these conditions, Arab countries are now involved in a project that aims to dissolve their identity… and replace it with a new one; the so-called Middle East system, where the U.S. and its strategic ally, Israel, would be the dominant actors (Al-Jawahri, 2003, p.16).

[5] An analysis on U.S. incentives to sign an FTA with Oman is provided in the conclusion of this chapter.

Other scholars contend that the MEFTA is not about trade liberalisation but about changing the Arab-Muslim world into the so-called "western values of democracy" (Shahatta, 2007). They argue that most of the Arab-Muslim countries are now WTO members and adhered to the MTS principles. Free trade has increasingly become the practice of their trade activities. Thus, there is no need for separate U.S. FTAs to dictate the values of economic liberalism to them. But, the idea is mainly about changing the culture and values of the Arab-Muslim world.

However, is the project of the MEFTA totally about fighting terrorism, integrating Muslim countries into the global trade, and helping them achieve prosperity? The non-inclusion of countries such as Pakistan and Afghanistan whose current governments have been major supporters for the U.S. campaign against terrorism do not support a “yes” answer. If the MEFTA is totally designed with the ultimate aim of fighting terrorism (Lindsey, 2003), the MEFTA project should have been extended to include Pakistan and Afghanistan. Ironically, whereas the Bush Administration showed strong support to negotiate and sign FTAs with Morocco, Bahrain, Oman, UAE, and others, Pakistan has eagerly and continuously asked the U.S. to enter in FTA negotiations as a reward for its alliance with the U.S. in its war against terrorism, and as an advancement of the trade and investment framework agreement (TIFA) that was signed in June 2003 between the two countries (USTR, 2006). In his meeting on November 30, 2005 with the USTR Rob Portman, the Pakistani Minister of Commerce, Humayun Akhtar Khan, expressed the eagerness of the then Pakistan's President Pervez Musharraf to sign an FTA with the U.S.

> President Pervez Musharraf was of the view that a Free Trade Agreement will go the distance in not only combating poverty but also reducing extremism…the strong political ties between Pakistan and the United States should also include economic ties. He [Musharraf] feels that in order to remove poverty which is essential for curbing extremism in that part of the world, Pakistan needs market access and the United States being one of the largest trading partners should give that access to Pakistan (Press Trust of India, 2005).

However, the U.S. has not shown enough enthusiasm to sign an FTA with Pakistan, perhaps due to the insecure environment of Pakistan where prominent anti-U.S. Islamists organisations such as Al-Qaeda have strong influence. Hence, ironically, while security interests appear as strong incentives for the U.S. to sign FTAs with countries such as Jordan, Oman, and Bahrain, it is also the security interest that seems to deter the U.S. from signing an FTA with Pakistan.

3.3.2. Economic factors

Besides the apparent political and security interests, there are other relevant economic factors that may justify U.S. endavour to sign FTAs with MEFTA countries. Economic statistics show that U.S. trade with the Middle Eastern countries reflects a small share of total U.S. trade; only 4.1 percent of all U.S. exports and 4.6 percent of all U.S. imports in 2005 (Bolle, 2006, p.4). Some might argue that because the Middle East composes only a small part of the overall U.S. trade, the impact of the MEFTA on the U.S. economy would be limited (Lawrence, 2006). However, this small share of U.S. trade activities, I argue, does not help the U.S. maintain its world economic superiority nor does it help its corporations expand their business activities in the region. Thus, the small share of U.S. trade in the Middle East can be seen as a motivating factor for the U.S. to sign FTAs with Middle Eastern countries. Moreover, statistics demonstrate the increasing economic interests of the U.S. in the Middle East, particularly in oil and gas which constitute 70 percent of total U.S. imports from the Middle East (Bolle, 2006). The Middle East holds 65 percent of the world's proven oil reserves and 36 percent of the world gas reserves, which enables it to satisfy much of the world's demand of oil and gas for around twenty years to come (Robertson, 2003) All of these factors provide good reasons for the U.S. to further consolidate its trade activities in the region and lower trade obstacles for U.S. businesses via FTAs. Realising the importance of the Middle East for their trade and investments, a group of influential U.S. corporations such as Boeing, Booz Allen Hamilton, ChevronTexaco, Dow, Exxonmobil, Intel, JR McDermott, and Motorola, collectively lobbied the U.S. Administration to proceed with the MEFTA project (Mekay, 2004). Robert Zoellick recognised the big opportunities for U.S. corporations in the Middle East and commented that with the establishment of the MEFTA *these opportunities will only multiply.* Also, many Middle Eastern countries have shown stronger adherence to economic liberal policies, opened their markets, reduced trade barriers, and welcome foreign investment, which should all provide U.S. companies greater incentives to increase their trading activities and invest in the region. As the Vice Chairman of the U.S. Chevron Texaco Corporation, Peter Robertson (2003) comments:

> ...the Middle East will remain center stage. In fact, its contribution to global energy supplies will become even more critical....Clearly, the international oil companies understand the promise of this region's energy resources. And those companies are encouraged by the steps that nations are taking to grow their economies by engaging the capabilities of the private sector and the support of outside capital....If Middle East attitudes about foreign investment and privatization are in transition, it's not a moment too soon.

3.3.3. An endless process of discriminations

Besides the political, security and economic factors that drove the U.S. to launch the MEFTA project, the previously mentioned argument of escaping from discrimination of other PTAs is also relevant to this project. This might even have been the case with the very early U.S. FTA with Israel signed in April 1985. Essentially, the apparent driving force behind this FTA was to help Israel consolidate its economy and export its products to international markets in light of the boycott practised against Israel by the Arab World. However, the U.S. motives not to loose competitive ground in the Israeli market and overcome competitive liberalisation of the EC can not be ignored (Rosen, 2004). The U.S. exports to Israel suffered from discrimination as a result of the Israel-EC FTA which had been in practice since 1975 (European Commission, 2006). In 1984, U.S. exports to Israel accounted for approximately 18 percent of the Israeli market, but the European exports to Israel were twice as large accounting for almost 40 percent of the Israeli market. This was a matter of concern for the U.S. as while it was granting Israel $3 billion in foreign assistance annually, U.S. companies were being placed at competitive disadvantage vis-à-vis European companies (Rosen, 2004). The U.S. became even more concerned by 1985 as the European exports would be more competitive in the Israeli market; after the end of the 10-year period that was given to Israel to eliminate its tariffs. Thus, the best means to overcome the EC-Israel FTA discrimination and help its exports back into business was by signing an FTA with Israel in 1985. Hence, the U.S. ironically sought to escape the EC-Israel discrimination by pursuing a similar discriminatory method; the U.S.-Israel FTA. Arguably, the latter was perceived by the U.S. to exert pressures on the EC to go back to the multilateral negotiating table during the Uruguay Round (Rosen, 2004).

> A side benefit of the US- Israel FTA has been its use by the US negotiators as a convenient tool with which to threaten other nations when multilateral negotiations seem about to stall. The United States' threat of possibly pursuing bilateral agreements, as it had done with Israel…may have had some effect in pressuring others to move forward on multilateral trade negotiations (Rosen, 2004, p.61)

Similarly, the U.S.-Israel FTA led to another discrimination against the Palestinians. As the result of the Oslo peace process in the 1990s, the U.S. promised to help the Palestinians develop their economy, but the U.S. law restricted the provision of trade preferences only to sovereign nations (Rosen, 2004). The U.S. tried to overcome this difficulty by expanding the U.S.-Israel FTA to include articles grown, produced, or manufactured in the West Bank and the Gaza Strip. But, this extension resulted in discrimination against Jordan which was overcome by the U.S.-Jordan FTA that became effective in October 2001. The U.S.-Jordan, in

turn, discriminated against other Middle Eastern countries, which was thought to be overcome by the establishment of the MEFTA by 2013. However, even by then, discrimination will still be practised against non-MEFTA members. Hence, FTAs ultimately lead to an everlasting process of discrimination that can only be overcome by going back to the MTS (Krueger, 1999).

> To use a biblical metaphor, FTAs may beget more FTAs. Negotiating FTAs is an endless process. To address their inherent discrimination, the number of countries with which we have an FTA must constantly expand (Rosen, 2004, p.75).

3.3.4. Steps towards achieving the MEFTA

Bush Administration adopted a six-step programme of trade deals for countries in the MEFTA to undertake. The idea is that each of these steps would seek to achieve political, economic, and humanitarian objectives, so that MEFTA candidates can become *sustainable trading partners* with the U.S. (Bolle, 2006, p.10). By negotiating activities in these steps, it is hoped that internal changes in the laws and regulations of the various MEFTA countries can take place, which then facilitates the full establishment of the project (Bolle, 2006). The fist step is the WTO membership, through which the concerned country is integrated into the world trading system (USTR, 2006). This step seems to be quite successful as most of the MEFTA countries are now members in the WTO. The second step is the continuation of the Generalized System of Preferences (GSP) for those eligible in the MEFTA. The GSP basically provides duty-free tariff treatment to around 3,500 products imported into the U.S. market from designated developing countries (Cooper, 2006). However, the GSP provisions exclude from tariff preferences certain textiles and apparel, watches, footwear, handbags, luggage, flat goods such as wallets and briefcases, work gloves, and other leather wearing apparel, steel, glass, and electronics. Oman is among the 8 MEFTA entities that are still eligible for GSP. These are; Egypt, Iraq, Jordan, Lebanon, Oman, Yemen, Algeria, and Tunisia. Other MEFTA countries are not eligible because some of them are no longer considered as "developing", and others do not meet the U.S. Administration's eligibility requirements (USTR, 2006; Jones, 2006).

The third step is trade and investment framework agreements (TIFAs) which establish a framework for expanding trade and for resolving outstanding disputes. Thus, TIFAs act as a consultative mechanism for the U.S to discuss issues affecting trade and investment with another country (USTR, 2006). Hence, TIFAs are non-binding agreements, but can be quite effective to address specific trade problems and help trading partners develop the experience,

institutions, and rules that advance integration into the global economy and create momentum for liberalisation that in some cases can lead to a free trade agreement (Bolle, 2006). The U.S. has negotiated TIFAs with countries that have shown serious steps towards economic liberal reforms. Most MEFTA countries, including Oman, have signed TIFAs with the U.S., except: Cyprus, the Gaza Strip and West Bank, Iran, Lebanon, Syria, and Libya (U.S. Department of States, 2006). The fourth step is bilateral investment treaties (BITs) which are more binding than TIFAs as they oblige countries to treat foreign firms fairly and offer them legal protections equal to those afforded to domestic investors. The objective of the BITs is to make the business climate more attractive to U.S. companies. Oman is among 14 Middle Eastern countries that do not have BITs with the U.S: namely Cyprus, the Gaza Strip and the West Bank, Iran, Iraq, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, the UAE, Yemen, Algeria, and Libya (USTR, 2006).

The fifth step is free trade agreements (FTAs) where tariff and non-tariff barriers to trade across all sectors are removed. There are five countries in the Middle East that have official free trade agreements with the United States; Israel, Jordan, Morocco, Bahrain, and Oman (USTR, 2006). The U.S. is also negotiating an FTA with the UAE and has suspended preliminary negotiations which were underway with Egypt over human rights issues (Bolle, 2006). The sixth and final step of the MEFTA is trade-capacity building through the Middle East Partnership Initiative (MEPI). The latter aims to help countries realise more fully the benefits of open markets and allocates structural adjustment funding to partner countries to help ease the burden of free trade's impact on local industries (USTR, 2006). The MEPI also aims at increasing educational opportunities, strengthening civil society and rule of law, and supporting small business (USTR, 2006). The MEPI seeks to help target more than $1 billion of annual funding from various government agencies and spur partnerships with private organisations and businesses that support trade and development (Bolle, 2006).

Since 2003, when President Bush announced launching the MEFTA programme there has been some development towards the six steps mentioned above. Saudi Arabia joined the WTO on December 11, 2005 (step one), the GSP has been continuing with some eligible countries (step two). The U.S has also negotiated and signed new TIFAs with seven countries; Kuwait, Oman, Saudi Arabia, the UAE, Yemen, Qatar, and Iraq (step three). Also, since 2003 the U.S has signed five BITs with MEFTA countries; namely, Bahrain, Egypt, Jordan, Morocco, and Tunisia (step four). Moreover, the U.S has completed three bilateral free trade agreements with

Morocco, Bahrain, and Oman since 2003, which have all entered into force.[6] Also, an FTA with the UAE is still under negotiations. For specific analysis on U.S. FTAs, see appendices 3.2 and 3.3 which examine the nature and the surrounding arguments behind the U.S. FTAs with Jordan and Morocco respectively.

However, despite these developments and although George Bush announced the year 2013 to be the deadline of the MEFTA completion, this deadline seems to be very difficult to meet given the complexity and the length of negotiations (Lindsey, 2003) and the increasingly tense political situations in the Gulf region mirrored in the volatile situation in Iraq and the heated tension over Iran's nuclear programme. This is also confirmed by Cathi Novelli of the USTR, as she indicated that the overall objective of the MEFTA exercise is not to meet the deadline, but to push the reform process in the region along (Novelli, 2005). Also, the Democrats' dominated Congress refusal to renew the trade promotion authority (TPA) which expired on July 1, 2007 restricted the previous Bush's Administration's ability to further negotiate and finalise FTAs without any amendment from the Congress.

The TPA is an authority guaranteed by the Congress to the President for a period of time to directly negotiate trade agreements, and the Congress can only approve or disapprove them but can not amend or filibuster them. It was guaranteed to the President twice in the post-Second World War era. The first was pursuant to Trade Act of 1974 from 1975 to 1994, which facilitated the task of subsequent U.S. administrations to lobby and conclude the Uruguay Round as a single undertaking set of agreements. Also, the TPA was simultaneously used in the FTAs with Israel and the NAFTA. The second period of the TPA was guaranteed by the Congress to Bush Administration in 2002, which was intensively used to conclude and secure Congress approval for many different FTAs such as the ones with Morocco, Bahrain, and Oman. However, the TPA expired on July 1, 2007 and until the time of writing this thesis, the Congress has not agreed to renew it. Ironically, if this situation continues in the future, the task of the new Barack Obama Administration to reach and conclude trade agreements; either bilaterally or multilaterally will be very difficult. The issue remains to be seen.

In light of the above, it is clear that the Oman-U.S. FTA is part and parcel of an overall dramatic shift in the U.S. trade policy from being a strongly loyal adherent to the MTS to an

[6] The U.S.-Oman FTA entered into force on January 1, 2009, after Oman had completed all the necessary modifications in its domestic laws to match those of the FTA.

advocator of an alternative preferential trading approach. But, is the U.S. an important trading partner for Oman, so that the FTA can be justified? What does Oman's trade sector look like? What are its main components? And, who are the main important trading partners for Oman? Section two provides the answers to these questions.

3.4. Oman's trading activities

Trade in Oman is considered to play the key role of inducing other economic activities and increasing the level of production, diversification, and Omanisation. Trade would act as a modem through which other economic sectors are linked and developed, so that sustainable development could be achieved. Oman Vision 2020 aims at raising the contribution of the trade sector in the Gross Domestic Product (GDP) to 15 percent by the end of 2020 by following a four-pillar strategy. The first is by creating a strong private sector capable of surviving in a world of free trade and open competitiveness based on laws and procedures that would help preventing monopoly and protecting consumers. The second is by maximising utilisation of the strategic location of Oman which will enable it to become a vital international trading point, particularly for re-exports. The third is by consolidating the exports capabilities via broadening the non-oil merchandise production and increasing efficiency in terms of product cost and quality. The fourth is by identifying the most important trading partners with special concentration on promoting trade and economic cooperation with the GCC countries (MNE, Long-term Development Strategy-1996-2020, 1995). Since the introduction of Oman 2020 in 1995, there have been two complete five-year development plans; the fifth plan (1996-2000) and the sixth plan (2001-2005). The seventh plan (2006-2010) is still continuing. The study analyses the performance of the trade sector during these plans, with specific focus on the sixth plan as during this plan Oman entertained full membership to the WTO and negotiated the FTA with the U.S.

3.4.1. The fifth five-year development plan (1996-2000)

The fifth plan coincided with Oman's application and negotiations to accede the WTO which culminated in being a full member to the Organization on November 9, 2000. Statistics for this plan show that the performance of the trade sector witnessed gradual growth but in some cases did not meet the planned growth. Table (3.4) below shows that the plan was set to achieve an average 4.4 percent annual growth in the trade balance. Exports were targeted to increase by an annual average of 3.8 percent. This low level of the expected growth was due to the uncertainty of the price of oil in the international market at the time when the plan was

inaugurated. Thus, the plan was set out on the basis of a low price of crude oil exports of $15 per barrel, leading to an annual average production of OR1787 million.[7] Non-oil exports of Omani origin and re-exports were more ambitiously set out to increase annually by 17.6 percent and 14.3 percent respectively. Imports were planned to increase by an average of 3.5 percent.

However, the actual performance was better than the plan. The price of oil witnessed noticeable improvement resulting in an annual average increase in exports of 13.2 percent with a value of OR3007 million; i.e. 8.8 percent higher than the planned growth. Similarly, non-oil exports of Omani origins achieved an annual average growth of 18.6 percent, which is 1 percent higher than the planned target. Re-exports also witnessed an annual average growth of 9.2 percent, but this was less by 5.1 percent from the planned 14.3 percent. Likewise, imports grew by 3.2 percent annually, which is 0.3 percent lower than the planned average annual growth. Overall, the trade balance witnessed annual average increase of 25.3 percent, which is far higher than 4.4 percent increase set originally in the plan.

Table (3.4): Trade balance: expectations and achievements for the five development plan (1996-2000)

Detail	Planned (OR million)							Actual (OR million)						
	1996	1997	1998	1999	2000	Average growth	%Annual average growth	1996	1997	1998	1999	2000	Average growth	%Annual growth
Trade balance	895	820	669	772	1023	836	4.4	1208	1158	118	1130	2586	1240	25.3
Exports (f.o.b)[8]	2480	2623	2626	2716	2814	2652	3.8	2835	2944	2123	2783	4352	3007	13.2
- oil exports	1782	1803	1791	1782	1776	1787	0.6-	2275	2234	1430	2127	3426	2298	13.2
-non-oil exports of Omani origin	244	299	262	314	410	306	17.6	173	203	199	201	427	241	18.6
- re-exports	454	521	573	620	628	559	14.3	387	507	494	455	499	468	9.2
Imports (f.o.b)	1585	1803	1957	1944	1791	1816	3.5	1627	1786	2005	1653	1766	1767	3.2

Source: Ministry of National Economy (2001c, p.42): Evaluation of the Performance of the National Economy in the Fifth Five-year Development plan (1996-2000).

3.4.2. The Sixth five-year development plan (2001-2005)

Based on Oman 2020, the sixth plan aimed at enhancing trade activities to increase economic efficiency. Initially, the plan estimated a deficit in trade balance by 7.5 percent. The value added for the trade sector was estimated to grow at a small annual average rate of 3.6

[7]OR stands for the Omani Rial, which is the official currency for Oman. Each Rial equals 1000 Baisa. The currency is pegged to the US dollar at OR 0.3845: US$ 1 (Economic Intelligence Unit, 2000, p.3).
[8] F.O.B. stands for "free on board", where the seller/supplier is responsible for covering the costs (which usually includes the insurance costs) of placing the good on the carrier; i.e. transferring the good from the point of manufacture to a specified destination, at which the purchaser takes responsibility.

percent. Participation of the trade sector in the GDP was estimated to reach 12.2 percent. However, the actual performance of the trade sector was stronger than the plan. Trade balance registered surpluses by an average of 9.7 percent a year, from OR2216 million in 2001 to OR4100 million in 2005. This improvement was mainly due to the substantial boost of exports, particularly in oil and gas exports, from OR4258 million in 2001 to OR7187 million in 2005. As a result, the average annual growth of the value addition of the trade sector increased by 8.7 percent from OR882.3 million in 2001 to OR1240.9 million in 2005, which is 5.1 percent higher than the planned annual growth. This strong performance was associated with Oman becoming an official member to the WTO in November 2000. These results are summarised in table (3.5) below. Performance of each component of the trade sector; exports, re-exports, and imports are further analysed below.

Table (3.5): Development of foreign trade balance during the sixth development plan (2001-2005)

Detail	Planned (OR million)						Actual (OR million)						
	2001	2002	2003	2004	2005	%Annual average growth	2000	2001	2002	2003	2004	2005	%Annual average growth
Trade balance	1429	1439	1389	1541	1748	-7.5	2586	2216	2129	2147	2118	4100	9.7
Exports (f.o.b)	3394	3558	3623	3714	2927	-2.0	4352	4258	4296	4487	5145	7187	10.6
-Crude oil exports	2316	2353	2344	2329	2302	-7.6	3426	2963	2897	3046	3553	5160	8.5
-Liquified natural gas exports	281	344	354	358	361	15.1	179	451	411	536	634	888	37.8
-Non-oil exports of Omani origin	260	285	305	362	548	17.2	248	266	261	304	420	555	17.5
-Re-exports	536	576	619	666	716	7.5	499	578	727	601	538	584	3.2
Imports (f.o.b)	-1965	-2119	-2234	-2173	-2178	4.3	-1766	-2042	-2167	-2340	-3027	-3087	11.8
Surplus/deficit of balance of trade	65	-45	-147	20	223	-29.5	1204	800	747	571	219	1813	8.5
Value addition of the trade sector	844.7	897.8	935.5	935.1	960.1	3.6	815.9	882,3	914,0	994,9	1145.9	1240,9	8.7
Participation of trade in GDP (%)	12.1	12.2	12.3	12.2	12.2	12.2	10.7	11.5	11.7	11.9	12.0	10.5	11.4

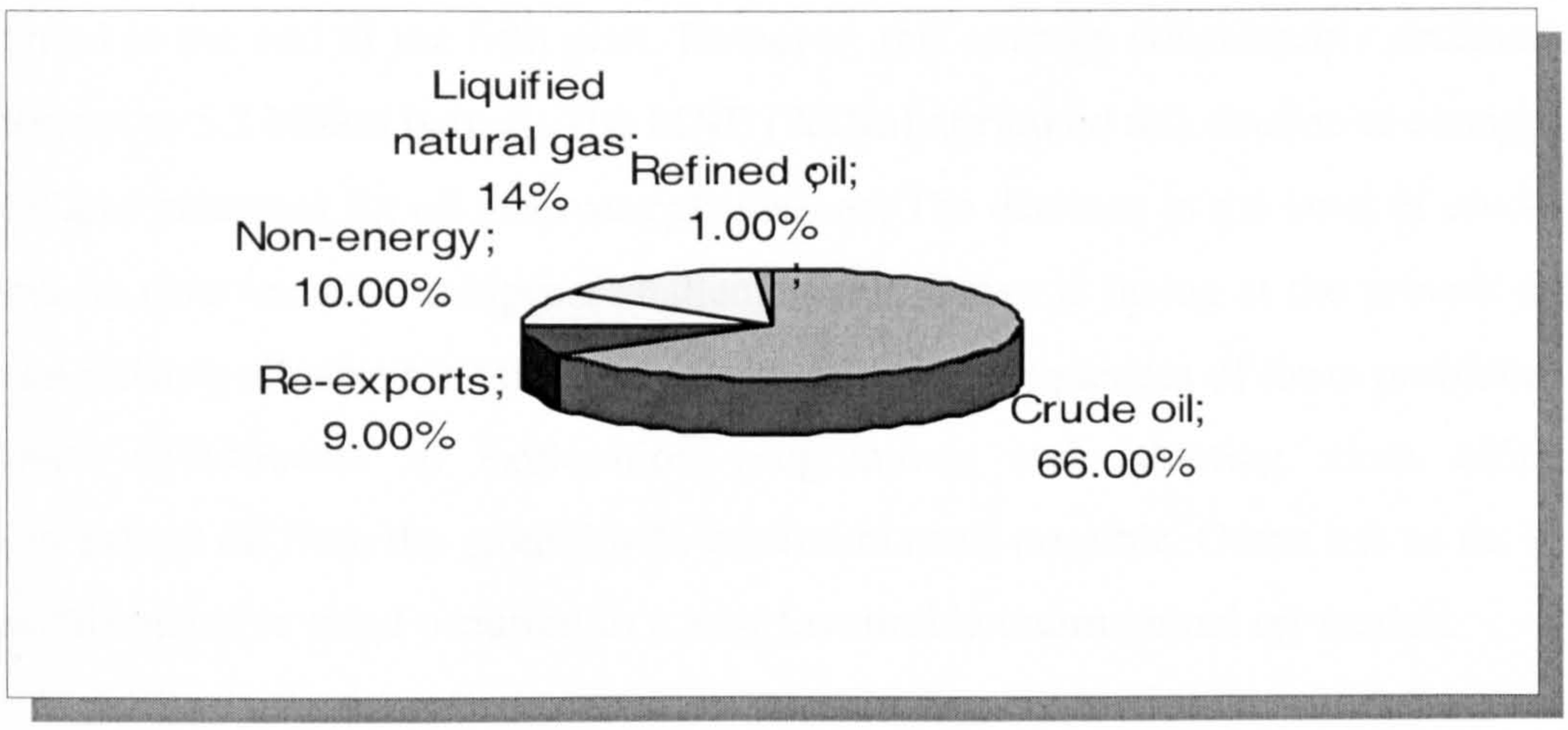
Source: MNE (2007a). The Seventh Development Plan (2006-2010): Part One: Assessment of the performance of the Sixth Development Plan 2001-2005.

3.4.2.1. Exports analysis

As explored in table 3.5 above, exports – on free on board basis (f.o.b) -- witnessed continuous increases throughout the sixth plan. In 2001, exports were OR4258 million but then increased substantially in the subsequent years by an annual average of 10.6 percent until it reached OR7187 million in 2005, which further increased to OR8299.5 million in 2006 and to OR9493.9 million in 2007 (MNE, Statistical Year-Book, 2008). As figure (3.1) shows, exports

performance varied across major categories; crude and refined oil, liquefied natural gas, non-oil exports, and re-exports, which are separately analysed below.

Figure (3.1): The structure of Omani merchandise exports for 2006



Source: MNE (2007b), Statistical Year Book.

3.4.2.1.1. Crude oil exports

Crude oil exports have dominated the merchandise trade transactions in Oman. After the sharp decline of oil prices in 1998 to as low as $8 per barrel, the average price of crude oil started to take off from $17,35 in 1999 until it reached $50,3 in 2005; a trend that was to continue until 2008 before it declined in the beginning of 2009 to around $40. This increase was much higher than the planned average price of $18 per barrel. As a result, crude oil exports jumped from OR2963 million in 2001 to OR5160 million in 2005, OR5528.3 million in 2006, and then to OR5553.5 million in 2007. These crude oil exports accounted for 71 percent, 66 percent, and 58 percent of total merchandise exports in 2005, 2006, and 2007 respectively, which clearly demonstrates Oman's continuous heavy reliance on oil sector as the main driving force of the economy.

Nonetheless, this trend of increasing crude oil exports was hampered by unexpected continuous decline in the level of actual production of crude oil. As table (3.6) below demonstrates, the estimated average production was set around 979,8 thousand barrel a day (b/d) throughout the plan period, but the actual production declined significantly from 955,8 thousand b/d in 2001 to 774,3 thousand b/d in 2005. Thus, the annual production of crude oil declined from 349 million barrels in 2001 to 283 million barrels in 2005. The MNE (2007a) attributed this decline to technical and geological difficulties associated with serious challenges in production

operations as many important wells reached maturity with the increasing amount of water associated with the production activities. This problem was accompanied with another serious challenge related to unpredicted decline in oil reserves. Initially, the plan ambitiously sought to maintain average annual reserves of around 6.2 billion barrels, which was similar to the reserves recorded in the end of the fifth plan. However, this average considerably declined by around 6.6 percent to 5.7 billion barrels. The MNE (2007a) attributed this decline to changes in the assessment and measures for oil reserves calculations. The declines in the level of crude oil production and its reserves are the biggest challenges that Oman is facing at the present time. Oman has been making all possible efforts to minimise the consequences of these problems by dedicating more investments in exploration programmes and adopting more efficient technologies to extract oil from the ground with minimum costs possible. Oman has so far been quite lucky as this negative trend occurred in a very favourable international oil market.

Table (3.6): Economic indicators for the performance of the crude oil during the Sixth Development Plan

Item	The sixth five development plan (million Omani Rial)					Average annual growth for the period of the plan
	2001	2002	2003	2004	2005	
Average price (US$/barrel)						
- Planned	18,0	18,0	18,0	18,0	18,0	18,0
- Actual	23,0	24,3	27,8	34,4	50,3	32,0
Average production						
- Planned (thousand/per day)	978,0	987,4	984,7	979,1	969,9	979,8
- Actual (thousand/ per day)	955,8	897,4	819,5	779,7	774,3	845,3
- Actual (million/ per year)	349	328	299	285	283	269
Exports (quantity)						
- Daily (thousand barrel)	908	838	763	733	718	792
- Annually (million/ barrel)	332	306	279	264	262	288,6
Exports (OR million)						
- Planned	2316	2353	2344	2329	2302	-7.6%
- Actual	2963	2897	3046	3553	5160	8,5%
Value addition (million OR):						
- Planned	2525,8	2552,7	2545,3	2537,3	2506,4	2533,5
- Actual	3105,5	3101,3	3211,7	37710	5362,8	3710,5
Participation in the GDP (%)						
- Planned	36,1	34,8	32,6	33,1	32,0	32,9
- Actual	40,5	39,7	38,3	39,6	45,2	40,7
Targeted oil reserves to be allocated to PDO (Million/Barrel)						
- Planned	441,0	375,0	297,0	351,0	310,0	354,8
- Actual	230,0	135,6	122,0	494,0	281,0	252.52
Targeted oil reserves to be allocated to other companies (Million/Barrel)						
- Planned	5901,0	5915,0	5853,0	5846,0	5802,0	5863,4
- Actual	5803,0	5705,9	5572,2	4803,2	5380,1	5452,9

Source: MNE (2007a). The Seventh Development Plan (2006-2010): Part One: Assessment of the performance of the Sixth Development Plan 2001-2005. Muscat: MNE.

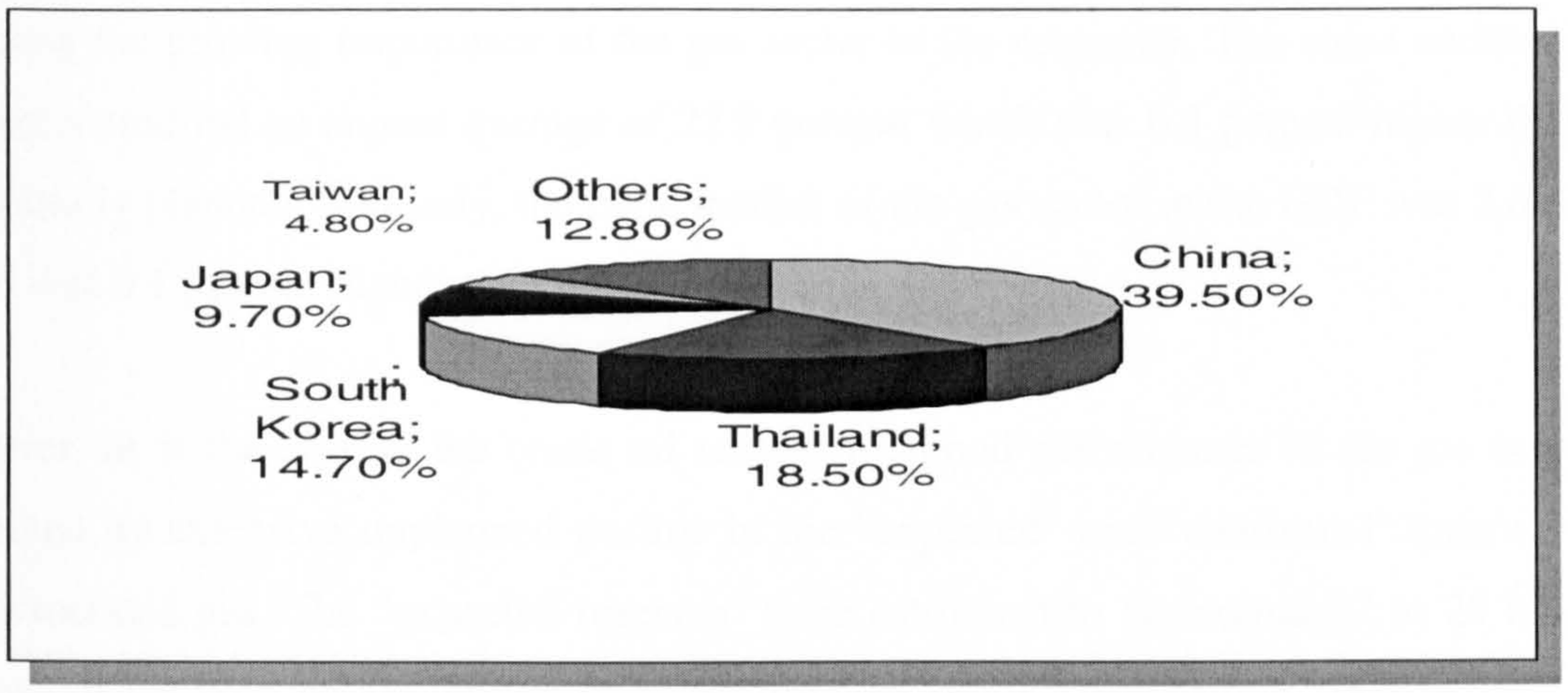
Most of Oman's crude oil exports are directed to Asian markets. In 2001, Japan was the biggest importer of Oman's crude oil exports of 90,1 billion barrels, followed by South Korea, China, and Thailand, each importing 58,9 million, 53,6 million, and 48,8 million barrels respectively. In 2002, Japan remained the importer number one of Oman's crude oil, although, by a smaller scale of 80.9 million barrels. China moved to be the second as it imported 54.6 million barrels, followed by Thailand and South Korea each importing 52.2 million and 46.7 million barrels respectively. However, for the period 2003-2006 China became consistently the importer number one of Oman's crude oil exports which reached their peak in 2004 when China imported 106.4 million barrels. This was because of the increasing demands of China for international oil. The U.S., on the other hand, was not an important importer of Oman's crude oil, the highest of which was in 2003 when the U.S. imported 8.2 million barrels; a quantity that can never match those exported to Asian markets. However, even this small number declined to zero in 2005 and 2006, which clearly demonstrates the very little importance of the U.S. market for Oman's exports of crude oil. For more details, see table (3.7) and figure (3.2) below.

Table (3.7): Direction of oil exports (in million barrels)

Country of destination	2001	2002	2003	2004	2005	2006
Japan	90,1	80,9	60,8	40,8	43,1	22,7
China	53,6	54,6	77,2	106,4	84,3	92,0
South Korea	58,9	46,7	43,0	41,9	41,1	34,2
Philippines	10,5	6,3	--	--	--	--
Taiwan	5,7	19,2	4,9	12,1	16,00	11,2
Thailand	48,8	52,2	51,9	43,4	44,00	43,2
Malaysia	13,4	10,9	13,7	--	6,9	12,0
United States	5,8	6,1	8,2	4,8	--	--
Singapore	21,1	16,5	9,7	3,1	7,5	5,3
Others	29,5	12,8	9,1	11,1	19,2	12,5
Total	331,5	306,2	278,5	263,6	262,1	233,2

Source: CBO (2006, 2007), Ministry of Oil and Gas (2005, 2006), and MNE (2006a).

Figure (3.2): Direction of Oman's oil exports (%) for 2006



Source: MNE (2007b).

3.4.2.1.2. Natural gas exports

Similar to crude oil exports, liquefied natural gas (LNG) exports witnessed significant boost throughout the sixth plan (2001-2005). Driven by favourable international prices and increasing demands in international markets, LNG exports increased substantially during the plan period, from OR451 million in 2001 to OR888 million in 2005. This trend further jumped to OR1144.6 million in 2006 and then to OR1180.4 million in 2007 (MNE, 2008), due to the start of the operation of the third train run by Qalhat LNG[9] in December 2005 (see table 3.8). LNG exports constituted 12.4 percent of the exports structure in 2005, which further increased to 14 percent in 2006 (figure 3.2). Destinations of LNG exports were South Korea, Japan, Spain, India, the U.S., France, Taiwan, and Belgium (CBO, 2006). The actual daily production of the gas (associated and non-associated) jumped from 723 million in 2001 to 918 million c/f in 2005; registering an annual average growth of 11.2 percent throughout the plan period.

The plan initially estimated that Government revenues would gradually increase from OR74 million in 2001 to OR89 million in 2005, but these revenues significantly increased from OR73.6 million in 2001 to OR393.6 million in 2005. In 2006, these revenues even rose more sharply to OR613.5 due to the price and demand increases in international markets. As a result, the share of the revenues of natural gas in the total Government revenues increased by 5

[9] Qalhat LNG shareholding consists of; the Omani Government (46.84%), Oman LNG (36.8%), Union Fenosa Gas of Spain (7.36%), and three Japanese firms – Mitsubishi Corporation, Itochu Corporation, and Osaka Gas, with each holding (3%). QLNG has long-term sale and purchase agreements (SPAs) with Union Fenosa (1.65 million tonnes a year), Osaka Gas (0.8m t/y), and Mitsubishi Corporation (0.8m t/y), with all totalling to about 3.3m t/y, which is just under the train's debottlenecked capacity of around 3.5m t/y (QLNG website, 2009).

percent every year which is 1.8 percent higher than initially predicted in the plan; thus reflecting the growing importance of the gas sector in the economy. The value addition of the gas sector reached an annual average of 22.9 percent which was 6.3 percent higher than what was initially planned. Similarly, the participation of the gas sector in the GDP was 2.6 percent, which was 0.1 percent higher than the plan.

However, as is the case in the crude oil sector, this good performance of the gas sector was hampered by extensive unplanned decline in the "expected" and "confirmed" reserves of the non-associated gas. The "expected reserves" were estimated to be around 27 to 29 billion c/f throughout the plan period. However, these reserves sharply declined in 2005 to 19.7 billion c/f. Similarly, the confirmed reserves of the non-associated gas which were set out to be between 18.8 – 19.5 billion c/f, declined sharply in 2005 to 10.2 billion c/f. The MNE attributed these declines to the introduction of new strict measures in evaluating gas reserves based only on the actually produced quantity. This decline has caused a big challenge for the Government and badly disturbed its economic plans. The Government had already committed itself to long sale agreements to export LNG to customers in Korea, Japan, and Spain, and had planned to utilise the rest of the reserves for establishing heavy intensive industries. But, due to the unexpected fall in the reserves, many projects had to be postponed. According to the EIU (2006c, p.26), the Minister of MOCI made it clear that the Government would not be able to accommodate any new additional gas-based industries in the Sohar Industrial area where many of the heavy industries are established and alternatively the Government would seek to promote other types of industries that do not use gas. Meanwhile, the Government has been seeking to import natural gas from Qatar and Iran to meet up increasing domestic demands. While negotiations with Iran are still continuing, Oman secured a liquefied gas quantity of 200 million c/f per day starting from the end of 2008 via the Dolphin Energy project[10] established between Qatar and UAE. The Government has also dedicated more funds for the exploration activities of gas.

Table (3.8): Economic indicators for the performance of the gas sector during the Sixth Development Plan

Item	The sixth five development plan (million Omani Rial)					Average annual growth for the period of the plan (%)
	2001	2002	2003	2004	2005	
Value addition of the gas sector - Planned	146,5	172,5	198,7	214,7	218,7	16,6

[10] Dolphin Energy project involves production and procession of natural gas from Qatar's offshore North Field. Then, the processed gas is transported by subsea pipeline to the UAE.

- Actual	158,9	167,8	212,4	247,9	421,8	32,9
Participation of the sector in the GDP (%)						
- Planned	2,1	2,3	2,6	2,8	2,8	2,5
- Actual	2,1	2,1	2,5	2,6	3,6	2,6
Expected reserves of the non-associated gas						
(billion c/f)	26,9	27,5	28,0	28,6	29,2	-0,7
- Planned	33,4	34,2	34,5	33,8	19,7	-8,3
- Actual						
Confirmed reserves of the non-associated gas (billion c/f)						
- Planned	18,8	19,0	19,1	19,2	19,5	-1,4
- Actual	24,4	25,1	24.9	24,2	10,2	-13,3
Average production (million c.f /per day)	733	789	852	853	918	11,2
- Assocaited[11]	273	281	266	288	271	1,6
- Non-associated	460	508	587	565	647	17,4
Liquified natural gas exports (OR million)						
- Planned	281	344	354	358	361	15,1%
- Actual	451	411	536	634	888	37%
Revenues of natural gas (OR million)						
- Planned	74	77	81	85	89	3,9
- Actual (final accounts of the states annual budgets)	73,6	76,6	87,0	250,9	393,6	39,9
Share of natural gas revenues in the total state's revenues (%)						
- Planned	3,0	3,1	3,2	3,3	3,4	3,2
- Actual	2,9	2,5	2,6	6,2	8,6	5,0

Source: MNE (2007a). The Seventh Development Plan (2006-2010): Part One: Assessment of the performance of the Sixth Development Plan 2001-2005: pp.57-64. Muscat: MNE.

3.4.2.1.3. Non-energy exports of Omani origin

In addition to heavy presence of oil and natural gas in Oman's trade, non-energy exports of Omani origin refer to those products substantially made or originated in Oman and are neither oil nor gas, such as animal, vegetable, foodstuff, beverages, mineral, chemical, plastic, and base metals. Thus, their growth is important for the economic diversification goal. The sixth plan witnessed an overall increase in the non-energy exports, a trend that continued in 2006 and 2007. The estimated planned annual growth by 17.2 percent was met as exports in non-energy related goods increased from OR266 million in 2001 to OR555 million in 2005, which further increased to OR812.3 million in 2006 and to OR1,290 million in 2007 (MNE, 2008). In 2005, non-energy exports constituted 8 percent of total exports, which then increased in 2006 to 10 percent (figure 3.2); thus providing an optimistic picture about the role of non-energy exports in the economy.

[11] Associated gas is the gas whose extraction from the ground comes with oil and other hydrocarbons, whereas non-associated gas is that which is extracted separately from any association of hydrocarbons.

Statistics of the Directorate of General Customs (DGC) and the MOCI indicate that live animal and animal products and base metals and articles thereof accounted for substantial shares of Oman's non-energy exports during the plan period. As table (3.9) below demonstrates, the value of live animal and animal exports increased from OR40.5 million in 2001 to OR90.6 million in 2005, but then decreased by 17.8 percent in 2006 to OR74.5 million. Base metals and articles exports rose from OR44.7 million in 2001 to OR95.8 million in 2005, which then increased by 29.1% in 2006 to OR123.7 million.

Most notably, however, the biggest trade growth was in chemicals and other related exports which increased from OR21.8 million in 2001 to OR89.2 in 2005, and then further increased by 55.5 percent to OR138.7 million in 2006. According to MNE (2007a), this substantial increase in chemical exports was due to the commencement of exports of fertilizer from the Oman India Fertilizer Company (OMIFCO) in 2005, which is expected to increase even further in the following years.

It is also important to note that while mineral exports such as cable pipes, iron, and steel products witnessed gradual slow growth during the plan period that reached OR50.5 million in 2005, they sharply increased in 2006 by 327.9 percent to OR216.1 million. In 2006, mineral, chemical, and base metals exports collectively constituted OR478.5 million, which is 58.9 percent of the total non-energy exports; thus demonstrating their importance in the diversification objective.

Another notable, yet opposite, change observed in the sixth plan was the very substantial decrease of textiles exports. In the 1990s, Oman's textiles exports witnessed improvement but in the sixth plan they decreased dramatically one year after another, from OR32.7 million in 2001 to 14.2 million in 2005, which then further went down to OR10.9 million in 2006 and then to OR7.2 million in 2007. This decline is primarily attributed to the termination of the Multi Fiber Agreement (MFA) and the full implementation of the Agreement on Textiles and Clothing (ATC)[12] of the WTO in 2005, which resulted in the closure of many textiles and clothing factories, and the redundancy of many Omani labours.

[12] Thorough analysis on the Agreement on Textiles and Clothing is provided in chapter six.

Table (3.9): Value of non-energy exports of Omani origin

Item	2001	2002	2003	2004	2005	2006	%change 2006/05
Live animals and animal products	40,5	54,0	61,6	91,9	90,6	74,5	-17,8
Vegetable products	20,5	18,1	14,4	15,2	16,1	12,9	-19,9
Animal or vegetable fats and oil	7,5	8,3	12,4	17,9	28,5	28,8	1.1
Foodstuff, beverages, tobacco, and others	13,9	16,2	20,5	26,0	35,5	32,1	-9,6
Mineral products	32,5	29,3	34,7	42.7	50,5	216,1	327,9
Products of chemicals and allied industries	21,8	21,8	25,6	28,0	89,2	138,7	55,5
Plastic, rubber and articles thereof	12,7	13,2	18,8	31,0	33,0	31,9	-3,3
Textiles and articles thereof	32,7	25,8	26,0	23,9	14,2	10,9	-23,2
Base metals and articles thereof	44,7	32,8	40,0	72,6	95,8	123,7	29,1
Others	39,0	42,0	50,1	71,1	101,9	142,7	40,0
Total	265.8	261,6	304,1	420,3	555,3	812,3	46,3

Source: CBO (2005, 2006, 2007), MNE (2007a).

Government statistics indicate that Oman's non-energy exports targeted different external markets. Reflecting the importance of geographical proximity for the development of the trade sector, the neighbouring UAE was on the top of the list of external markets for Oman's non-energy exports throughout the period plan, 2006 and 2007 (see table 3.10). In 2005, the UAE received the highest (34.9 percent) of these exports with a value of OR194 million, which further jumped to OR320.9 million in 2006 and then to OR522.7 million in 2007. The UAE together with Saudi Arabia accounted for about 45 percent of total non-energy exports of Omani origin in 2005. Most notably, India emerged as the second most important external market for Oman's non-energy exports in 2005, 2006, and 2007 after the UAE. The exports to India reached OR70.5 million in 2005, which substantially increased to OR124.5 million in 2006 and then to OR175.9 million in 2007. As indicated above, this improvement was mainly due to the take-off of export fertiliser to India from the OMIFCO in 2005.

The U.S., on the other hand, was never an important destination market for Oman's non-energy exports. In 2004, non-energy exports to the U.S. were OR32.1 million, representing only 7.6 percent market share of the total non-energy exports. But, even this small percentage dramatically dropped in 2005 to OR19.1 million and then to OR15.6 million in 2006, which constituted only 1.9 percent of total non-energy exports. This further declined to 1.5 percent in 2007. The CBO (2006, 2007, 2008) expects the non-energy exports to the U.S. market to increase in the future as a result of the Oman-U.S. FTA, but whether such an expectation will be realised in real practice is difficult to determine at this stage as the FTA has just been put into effect. However, the above-mentioned results ultimately reflect the non-importance of the U.S. market for Oman's non-energy exports before the implementation of the FTA.

Table 3.10: Destination of non-energy exports

Country	2004 (OR million)		2005 (OR million)		2006 (OR million)	
	Non-energy exports	% of total	Non-energy exports	% of total	Non-energy exports	% of total
UAE	126,7	30,1	194,0	34,9	320,9	39,5
Saudi Arabia	51,5	12,3	53,6	9,7	49,0	6,0
United States	32,1	7,6	19,1	3,4	15,6	1,9
Jordan	26,2	6,2	22,3	4,0	4,4	0,6
Yemen	15,4	3,7	19,5	3,5	20,9	2,6
Kuwait	14,6	3,5	13,6	2,4	15,7	1,9
Qatar	14,4	3,4	21,6	3,9	31,9	3,9
Iraq	10,8	2,6	12,0	2,1	11,2	1,4
Pakistan	10,4	2,5	8,4	1,5	16,0	2,0
Syria	10,3	2,5	3,5	0,6	3,0	0,4
India	8,6	2,0	70,5	12.7	124,5	15,3
Somalia	7,7	1,8	10,5	1,9	16,3	2,0
Bahrain	6,8	1,6	6,3	1,1	6,6	0,8
Taiwan	5,8	1,4	2,5	0,5	8,0	1,0
Iran	4,2	1,0	3,3	0,6	12,2	1,5
Others	74,8	17,8	94,4	17,0	156,2	19,2
Total	420,3	100	555,3	100,0	812,3	100,0

Sources: CBO (2005, 2006, 2007); MNE (2007c).

3.4.2.1.4. Re-exports

Re-exports are imports directed for exports to other countries with or without value addition to the domestic economy, and hence such exports have strong import contents. Omani re-exports include food, live animals, beverages, tobacco, minerals, fuels, lubricants, animal and vegetable oil and fats, chemicals, manufactured goods, and machinery and transport equipment. Re-exports can play an important role in the diversification process, depending on the extent of their value addition to the economy. Table (3.11) below shows that re-exports were not steady throughout the sixth plan. While they increased in the early period of the plan; from OR498.6 million in 2000, to OR577.6 million in 2001 and then to OR726.7 million in 2002, they declined by 17.3 percent to OR600.8 million in 2003 and then by 10.4 percent to OR538.2 million in 2004. However, in 2005 re-exports grew by 8.5 percent to OR583.8 million, which further increased in 2006 by 31.3 percent to OR766.8 million, which further increased by 30.9 percent to OR1003.3 million in 2007 (CBO, 2008).

Nevertheless, as indicated above, the impact of re-exports in the diversification process depends much on their value added to the economy. Machinery and transport equipments constitute the biggest share of 86 percent of the total re-exports. Their increase by 26 percent in 2005 to OR502.4 million and then by 32 percent in 2006 to OR663 million, was the main factor for the total increase of re-exports. However, this increase of re-exports of machinery

and transport equipment may not have real value addition to the economy, as it may only reflect the use of port and road infrastructure of Oman for delivering bulk-imports to neighbouring countries (CBO, 2007). Hence, Oman acts as no more than a middle point for transferring these equipments to other countries. Value addition can be greater in re-exports of manufactured goods and miscellaneous manufactured articles, but once again, this depends on how much modification made to them. However, re-exports of manufactured goods declined in 2005 to OR15.4 million and to OR13.5 million in 2006. Miscellaneous manufactured articles declined in 2005 by 34.8 percent to OR19.9 million but they substantially increased by 81.9 percent to OR36.2 million in 2006.

Table (3.11): Value of re-exports

Item	2001	2002	2003	2004	2005	2006	%change 2006/05
Food and live animals	29,8	29,4	22,9	19,0	8,8	17,9	103,4
Beverages and tobacco	149,0	144,7	82,8	24,5	13,8	9,6	30,4
Crude materials inedible except fuels	4,2	2,3	2,5	2,2	5,2	6,5	25,0
Minerals, fuels, lubricants, and related materials	1,0	6,9	9,9	0,1	0,9	0,1	88,9
Animal and vegetable oil and fats	0,5	0,2	0,2	--	0,1	--	--
Chemicals	8,7	13,1	11,3	7,8	7,8	6,8	12,8
Manufactured goods	43,1	73,1	61,8	17,6	15,4	13,5	12,3
Machinery & transport equipment, of which road vehicles and other transport equipments	307,9	405,2	338,1	398,8	502,4	663,0	32,0
Miscellaneous manufactured articles	18,6	24,5	33,3	30,5	19,9	36,2	81,9
Commodities/ transactions not classified elsewhere	15,0	27,4	38,0	37,7	9,3	13,1	40,9
Total	577,6	726,4	600,8	538,2	583,8	766,8	31,3

Sources: CBO (2005, 2006, 2007); MNE (2007c).

As in non-energy exports, re-exports destinations were quite diverse. The UAE, once again, was the destination market number one for Oman's re-exports. As table (3.12) demonstrates, the UAE received 42.8 percent, 54.3 percent, and 56.3 percent of the total re-exports in 2004, 2005, and 2006 respectively. The second was Iran, which received 15.5 percent, 8.3 percent, and 9.2 percent respectively. Saudi Arabia was the third: absorbing 6.4 percent, 7.8 percent, and 4.8 percent of Oman's re-exports for 2004, 2005, and 2006. Together, these three neighbouring countries were the destinations of more than 70 percent of Oman's re-exports for 2004-2006; thus, reflecting the importance of geographical proximity for the development of re-exports as one of the main elements of Oman's trade development. Also, industrialised countries such as the U.K., Hong Kong, Singapore, and Belgium were destinations for Oman's re-exports but with a lesser extent than the UAE, Saudi Arabia, or Iran. Re-exports to the U.K. were OR34.3 million in 2004, which then increased to OR45.8 million in 2005. The U.K. market share of re-exports from Oman in 2005 constituted 7.8 percent; the fourth after the

UAE, Iran, and Saudi Arabia. However, the U.S. did not appear in the list of countries importing re-export items from Oman, which further demonstrates that the U.S. is not an important trading partner for Oman.

Table 3.12.: Destinations of re-exports (2004-2006)

Country	2004 (OR million)		2005 (OR million)		2006 (OR million)	
	Re-exports	% of total	Re-exports	% of total	Re-exports	% of total
UAE	2302	42,8	316,8	54,3	431,7	56,3
Iran	83,6	15,5	48,7	8,3	70,8	9,2
Saudi Arabia	34,3	6,4	45,8	7,8	36,7	4,8
UK	22	4,1	16,4	2,8	21,9	2,9
Hong Kong	17,5	3,3	13,1	2,2	20,1	2,6
Singapore	13,5	2,5	9,8	1,7	10,5	1,4
Belgium	13,4	2,5	5,0	0,9	13,6	1,8
Yemen	12,2	2,3	9,2	1,6	8,3	1,1
China	11,6	2,2	3,9	0,7	1,8	0,2
Iraq	9,4	1,7	3,4	0,6	4,3	0,6
Libya	9,3	1,7	9,4	1,6	15,0	2,0
Germany	6,6	1,2	7,0	1,2	7,4	1,0
India	5,4	1,0	7,7	1,3	10,0	1,3
Sudan	5,3	1,0	6,9	1,2	8,8	1,1
Kazakhstan	4,4	0,8	3,3	0,6	7,7	1,0
Others	59,7	11,1	77,3	13,3	98,1	12,8
Total	538,4	100,0	583,8	100,0	766,8	100,0

Sources: CBO (2005, 2006, 2007); MNE (2007c).

3.4.2.2. Imports analysis

The sixth plan predicted an average annual increase of imports by 4.3 percent. But, as table (3.3) shows, the actual result was 11.8 percent, as imports gradually increased from OR2042 million in 2001 to OR3087 million in 2005, which further increased to OR4244 million in 2006 and then to OR6161.5 million in 2007 (CBO, 2007; MNE, 2008). The Central Bank of Oman (2006, 2007) attributed this growth to:

(i) high domestic demands of the big industrial projects for large machineries, as part of the diversification process;

(ii) increasing demands for vehicles, and

(iii) high increase in the prices of imports in international markets.

As table (3.13) shows, the highest growth of recorded imports concentrated in machinery and transport equipments, which consistently increased from OR881.7 million in 2001 to OR1637.4 million in 2005; and further increased by 27.3 percent to OR208 million in 2006. Similarly, imports of manufactured goods increased from OR345.9 million in 2001 to OR569.1 million in 2005, which then substantially increased by 40.7 percent to OR799.4 million in

2006. Likewise, other miscellaneous manufactured items increased from OR157.8 million in 2001 to OR198.3 million in 2005, which further increased by 20.7 percent to OR239.4 million in 2006. All other types of imports; food and live animals, crude materials (iron, wood, and cooper), minerals and fuels, animal/vegetable oil/fats witnessed general increase, albeit at different and sometimes fluctuating trends. However, the only exception of this growing trend of imports was beverages and tobacco which sharply declined from OR198.1 million in 2001 to OR31.2 million in 2005, while 2006 only witnessed a slight increase by 5.4 percent. This decline may be attributed to the high level of tariffs applied against imports of alcohol and cigarettes.[13] It is also worth observing that throughout the sixth plan period most imports entered Oman via sea, which constituted 64 percent of total recorded imports in 2006.

Table (3.13): Composition of recorded imports[14]

Classifications (millions OR)	2001	2002	2003	2004	2005	2006	%change 2006/05
Food and live animals	269,3	266,7	288,1	369,1	340,1	382,1	12,3
Beverages and tobacco	198,1	185,2	117,8	43,5	31,2	32,9	5,4
Crude materials, inedible except fuels	53,2	60,3	112,3	105,0	88,5	123,0	39,0
Minerals, fuels, lubricants, and related materials	61,8	51,1	83,2	83,8	141,0	139,2	-1,3
Animal/vegetable oil/fats	9,2	13,0	20,3	26,0	25,0	28,2	12,8
Chemicals and related products	160,2	169,6	189,7	246,1	284,6	280,6	-1,4
Manufactured goods	345,9	352,4	390,4	587,3	569,1	799,4	40,7
Machinery and transport equipments	881,7	966,0	1087,0	1565,0	1637,4	2085,0	27,3
Miscellaneous manufactured articles	157,8	135,3	157,6	183,2	198,3	239,4	20,7
Commodities and other transactions	92,2	109,5	80,6	105,0	78,8	87,1	10,5
Total	2229,3	2309,1	2527,0	3313,0	3394,0	4196,9	23,7

Sources: CBO (2005, 2006, 2007); MNE (2007c).

Table (3.14) shows that countries of imports changed considerably throughout the sixth plan due to changes in domestic demands and exchange rate developments, and the emergence of more competitive suppliers of homogenous products in the global market (CBO, 2006). As is the case of exports, the UAE was the main source of Oman's imports throughout the sixth plan and 2006; thus once again reflecting the importance of geographical proximity for Oman's trading activities. In 2004, imports from the UAE were OR1072.3 million constituting 32.4 percent of Oman's total imports. Although this value fell in 2005 and 2006 to 26.5 percent and 25.8 percent respectively, the UAE continued to be ranked number one in Oman's imports list. In addition, Oman's imports from Asian countries witnessed noticeable increases during the

[13] According to the Final Accounts for 2006, the Government revenues from custom duties were over OR114 million, which is much higher than the OR75 million originally estimated in the 2006 Budget (Directorate General of Treasury and Accounts - Ministry of Finance, 2006, p.17).

[14] Import figures in this table include recorded imports only and they do not necessarily tally with import figures in table 3.4, which cover both recorded and non-recorded imports.

sixth plan, with Japan was the second main exporter of Oman's imports. But unlike the UAE, imports from Japan increased from OR464 million in 2004 to OR534 million in 2005 and then to OR724 million in 2006. Similarly, imports from China, India, and South Korea increased remarkably. However, imports from some European countries such as Italy, France, Netherlands, and the UK dropped significantly in 2005 and 2006, in comparison with 2004; thus, reflecting the high cost of imports from these countries due to increase in transports costs.

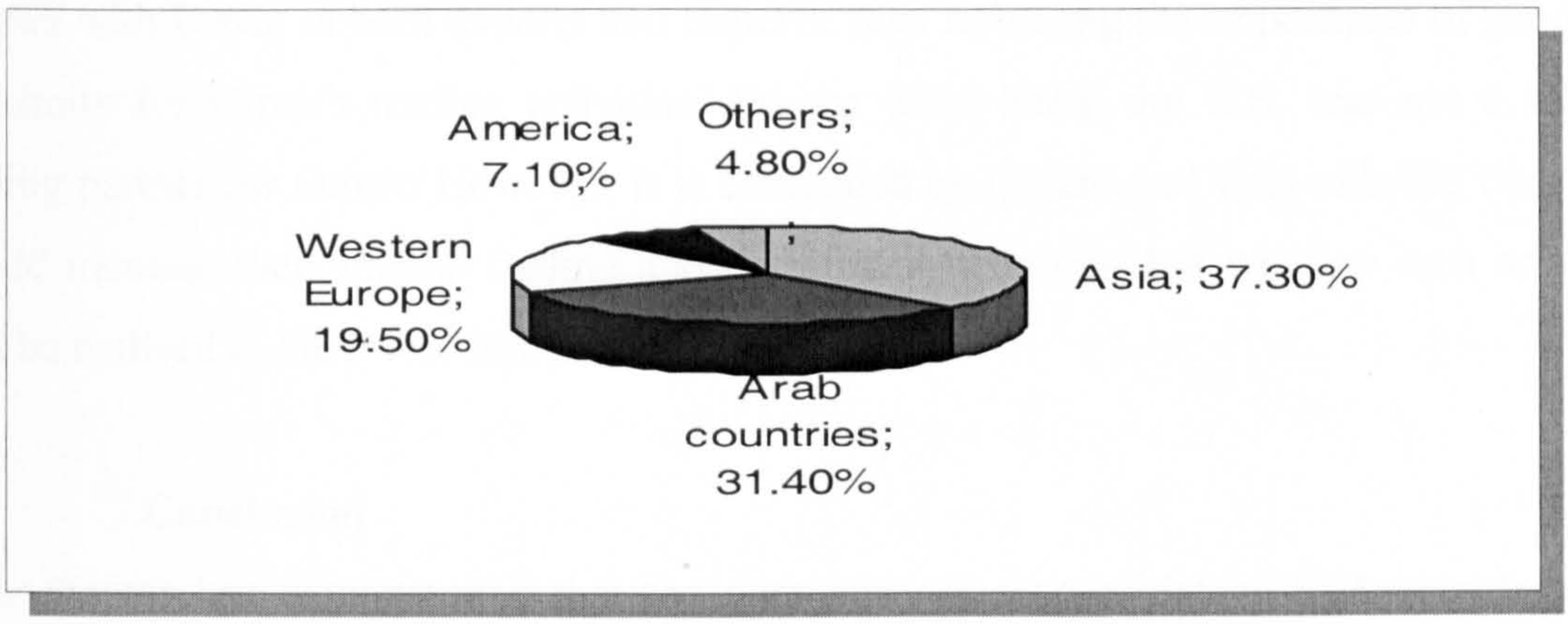
It should be noted that the U.S. was not a very major exporter to Oman during the plan period as Oman's imports from the U.S. constituted only 6.2 percent of the total imports in 2005, which even dropped to 5.2 percent and 5.8 percent in 2006 and 2007 respectively (CBO, 2007; MNE, 2008). Figure (3.3) below explores the recorded merchandise imports to Oman by region in 2006. It shows that only 7.1 percent of Oman's recorded imports originated from the region of America, which further demonstrates that the U.S. and other countries in the American region are not important exporters of Omani goods as is the case with Asian and Arab countries. The latter constituted 37.3 percent and 31.4 percent respectively of Oman's recorded imports for 2006.

Table 3.14: Sources of recorded imports (2004-2006)

Country	2004 (OR million)		2005 (OR million)		2006 (OR million)	
	Imports	% of total	Imports	% of total	Imports	% of total
UAE	1072,3	32,4	898,3	26,5	1083,7	25,8
Japan	464,0	14,0	534,0	15,7	724,0	17,3
Italy	195,2	5,9	67,7	2,0	86,8	2,1
UK	164,0	5,0	147,8	4,4	142,1	3,4
Germany	163,2	4,9	232,9	6,9	212,0	5,1
United States	163,1	4,9	208,8	6,2	219,3	5,2
France	131,4	4,0	71,4	2,1	73,6	1,8
India	121,3	3,7	153,3	4,5	222,2	5,3
Netherlands	82,0	2,5	59,4	1,8	83,7	2,0
South Korea	74,9	2,3	109,0	3,2	147,7	3,5
Australia	72,5	2,2	70,0	2,1	83,2	2,0
China	57,5	1,7	81,8	2,4	141,7	3,4
Saudi Arabia	46,5	1,4	97,5	2,9	144,8	3,5
Singapore	37,6	1,1	32,9	1,0	49,2	1,2
Belgium	37,5	1,1	38,2	1,1	54,1	1,3
Others	429,6	13,0	591,1	17,4	728,8	17,4
Total	3312,6	100,0	3394,0	100,0	4196,9	100,0

Source: CBO (2006, 2007), MNE (2006a).

Figure (3.3): Recorded merchandise imports to Oman by region for 2006



Source: MNE (2007b).

In light of the above analysis, the value of Oman's merchandise exports grew substantially during the sixth development plan in comparison with the fifth plan, mainly due to significant increase in the price of crude oil and LNG. However, both sectors have been under severe pressure as a result of the continuous decline of oil production and limitation of gas resources. This is the biggest challenge facing the Omani economy at the present time.

The favourable performance of other non-oil sectors and re-exports may be seen as providing an optimistic and promising picture about the future of the diversification policy. However, there are some important factors which may demote this optimism. Firstly, crude oil and LNG are still the most dominant two sectors since they both constituted 80 percent of Oman's merchandise exports structure in 2006 (see figure 3.1). Contribution of the crude oil in the GDP by the end of the sixth plan was still at a high rate of 45.2 percent. Secondly, the majority of the newly established industries as part of Oman's diversification objectives are oil and gas based industries such as Oman Methanol, Oman Petrochemical Industries Company, Oman Polypropylene, and Sohar Refinery. Thirdly, most of non-energy exports that witnessed substantial growth during the sixth plan such as chemical and mineral exports are also energy based products. Thus, oil and gas will continue to be the main dominating factors of the overall performance of Oman's economy. Fourthly, although re-exports grew noticeably during the plan period, this growth concentrated on machinery and transport equipments, which have limited value addition as the ultimate destinations for most of them were other neighbouring countries, and Oman was only a middle point for their transfer.

In addition, the study has revealed that the neighbouring UAE has been the biggest trading partner with Oman in both exports and imports; thus reflecting the importance of geographical proximity for Oman's trading activities. On the other hand, the U.S. was not a substantial trading partner for Oman. However, it is contended by Omani and U.S. officials that the FTA would increase their mutual trading and investment activities, but whether such an ambition will be realised in the future remains to be seen.

3.5. Conclusion

This chapter has demonstrated that the pursuance of discriminatory FTAs has become the centre-piece of the U.S. political economic thinking. Besides political and foreign policy objectives, FTAs allow U.S. products and corporations to stay competitive in international markets and escape from the discrimination of other PTAs. In addition, through FTAs, the U.S. has managed to achieve its special agenda of incorporating government procurement and linking labour and environmental standards to trade; the agenda that has proven extremely difficult to achieve under the MTS.

The coverage of different issues of U.S. interests has improved from one FTA to another. While the Jordan FTA was once described as a model for future FTAs due to its inclusion of a wide range of issues of U.S. interests including sperate chapters on labour and environment, Morocco, Bahrain, and Oman's FTAs subsequently emerged as even more comprehensive and each of them was described as a template agreement for future U.S. FTAs. (Appendix 3.4 reviews some background and the main contents of Oman-U.S. FTA). This unprecedented enthusiasm and the speed that has characterised U.S. FTAs since 2001 poses serious questions about whether the U.S. will remain a faithful adherent to the MTS. Unless the U.S. abandons its current preferential trade policies and takes on the leading role to push the MTS negotiations forward, the MTS future will continue to be at risk. However, any changes in the U.S. trade policy towards the MTS depends much on the agenda of the new U.S. Administration and the extent to which the Congress will be willing to renew the trade promotion authority (TPA) which expired on July 1, 2007.

The chapter has also revealed that the analysis of Oman's trade sector does not present the U.S. as an important trade partner for Oman, unlike the UAE and other Asian countries. In other words, the analysis of Oman's trade sector does not provide sufficient explanations for the incentives for both Oman and the U.S. for getting involved in the FTA. There appears to be

other more important reasons beyond trade activities. For the U.S., an FTA with Oman, and the rest of the GCC members, would further strengthen its ties with these countries and help achieve the U.S. security interests in the Gulf region, particularly with the continuation of its conflicts with Iran over the latter's nuclear programme and Iran's influence in Iraq.

Given the very important strategic location of Oman at the entrance to the Arabian Gulf, which is 35 miles directly opposite to Iran and Oman's shared supervision with Iran of the Strait of Hormuz, this makes Oman a very important strategic ally for the U.S. This is particularly the case when it comes to the protection of oil supply coming through the Strait of Hormuz, which acts as a gateway between the Indian Ocean, East Africa, and Arabian Gulf. According to official statistics published by the U.S. Energy Information Administration (EIA), Iraq and the GCC countries together, apart from Oman, exported 18.2 million b/d in 2006, of which 17 million barrels were exported daily via the Strait of Hormuz, representing around one-fifth of the world oil supply (EIA, 2007, 2009). As the USTR Robert Zoellick (2004, p.1) puts it -- in his letter to the U.S. Senate on the intent of the U.S. Administration to negotiate an FTA with Oman -- *Oman is a close partner on the Strait of Hormuz and will continue to be an important strategic colleague on a broad array of foreign and national security issues.*

For the part of Oman, the FTA is a continuation of the already strong relation with the U.S. and a confirmation of Oman's pro-Western foreign policy. Oman was one of the very few Arab countries that supported the 1979 Camp David Accords between Egypt and Israel and did not break relations with Egypt after the signing of the Egyptian-Israeli Peace Treaty in 1979 as most Arab countries did. Oman has always been a strong supporter of the Middle East peace process, and was the first Gulf country to host in April 1994 the plenary meeting of the Water Working Group of the peace process, which resulted in establishing a Middle East Desalination Research Centre in Oman. Oman also maintained a good relationship with Israel, which was apparent in the period 1996-2000 when Oman and Israel exchanged trade offices (Walker, 2007). However, Oman had to close the Israeli Trade Office in October 2000 in the wake of public demonstrations against Israel during the Palestinian Intifada. Being aware of the U.S. MEFTA pre-condition of not practicing any boycott against Israel and further assuring itself as a pro-U.S. ally, the Minister of Commerce and Industry of Oman confirmed in a letter dated September 28, 2006 headed to the USTR Robert Portman that Oman maintains no boycotts against Israel at any level and maintains no restrictions against any U.S. company trading with Oman irrespective of its shareholding with other Israeli companies.

Moreover, the FTA with the U.S. will strengthen the already existing defence agreement through which Oman has for many years permitted the U.S. to utilise its military bases in Masirah Island, Seeb, and Thumrait (in the south) within Omani territories (Nyrop, 2007). This agreement was last renewed for the third time in 2000 for ten years (Katzman, 2008).

The strong historical and political relationship was clearly emphasised by both Oman and the U.S. at the times of negotiating and signing the FTA. They praised the relations between themselves since the early years of the U.S. independence. The friendship and navigation treaty signed between them in 1833 was referred to in order to provide legitimacy. This was one of the first agreements of its kind with an Arab country. This treaty was then replaced by the Treaty of Amity, Economic Relations, and Consular Rights in 1958 (Katzman, 2008).

However, although the above non-economic factors better justify Oman and the U.S.' endavour to sign the FTA, the latter remains a trade agreement in nature and substance. It consists of very comprehensive chapters with detailed legal obligations that cover many issues and sectors, such as market access, textiles, government procurement, telecommunications, financial services, investment, labour, environment, and rules of origin (see Appendix 3.4). The extent to which these obligations will affect Oman's trading activities is difficult to determine at this stage as the FTA has only been put into force since January 2009. The effects remain to be seen in the next few coming years.

CHAPTER FOUR: METHODOLOGY

4.1. Introduction

Chapter one has explored how the multilateral trading system (MTS) has managed to overcome many different challenges and survive in the post-war era. With the foundation of the World Trade Organization (WTO), the MTS has become well-established, whose agreements and regulations serve all members with special considerations given to developing and least-developed countries. The chapter has also outlined the main challenges that the WTO has been facing since its foundation in 1995, the biggest of which have been the continuos disagreements between developed and developing countries over different ranges of issues that were apparent in different Ministerial Conferences (MC) particularly Seattle and Cancun MCs. Such difficulties have resulted in the proliferation of preferential trade agreements (PTAs), which have started to cause serious challenges to the viability of the MTS as the best system governing international trade.

Chapter two has examined the main causes of this phenomenon and reviewed the literature on the work of two schools of thoughts. The first are those who hold a positive view about the PTAs and regard them as a facilitating factor for more trade liberalisation that would ultimately work for the benefit of the MTS. The second are those scholars who believe that these agreements are based on discrimination and would never complement the global trade liberalisation in the way achieved through the MTS.

Section one of chapter three has specifically looked into how PTAs have become clearly accommodated in the U.S. political economic thinking and how the MEFTA project was designed to serve both the political as well as economic agenda of the U.S. The study has also analysed the cases of the U.S. FTAs with Jordan and Morocco and reviewed their background and main contents. The study has found that although these two agreements were driven by political motives, escaping from discriminations caused by other PTAs against U.S. products and businesses could also be regarded as another direct incentive for the U.S. behind signing these two FTAs (Appendices 3.2 and 3.3). Section two of chapter three has looked into Oman's trading activities and found that the U.S. has not been an important trading partner for Oman. Political and security interests could better justify motivations for both Oman and the U.S. to sign the FTA than trade incentives.

4.2. The methodology

In light of the above-mentioned background, the study, based on qualitative methodology, has sought to examine and analyse Oman's policy choices under the FTA and the WTO. The aim has been to find out which of the two trading approaches provides more flexible arrangements for Oman. A qualitative methodology suits this study because analysing legal texts and exploring the views of the participants about reasons for Oman to be a party to two different, and arguably contradictory, approaches, and analysing their negotiating and working experiences under each approach require thorough explanations and interpretations that are difficult to achieve through quantitative methodology. As scholars such as Lindsay (2003) and Ezzy and Liamputtong (2005) argue, qualitative methods provide an insight into how people make sense of their experiences that cannot be easily provided by other methods. As Sandelowski and Barroso (2004, p.40) put it;

> *Qualitative research* [originally italic] is an umbrella term for an array of attitudes toward and strategies for conducting inquiry that are aimed at discerning how human beings understand, experience, interpret, and produce the social world... Qualitative research encompasses richly detailed descriptions and in-depth, particularized interpretations and persons and the social, linguistics, material, and other practices and events that shape their lives and are shaped by them.

Also, understanding participants' views on which trading approach provides better arrangements for Oman's trade could only be achieved through qualitative research methods. This is because the latter are more *flexible and fluid* in their approach than quantitative statistical methods (Ezzy and Liamputtong, 2005, p.2). This flexibility allowed the researcher to go beyond fixed answers to interpret participants' views and understand their experiences and feeling about different issues related to the WTO and the FTA (Guba and Lincoln, 1994). As Hammersley (1992) (cited in Liamputtong and Ezzy, 2005, p.2) puts it; *qualitative data are reliable because they document the world from the point of view of the people studied...rather than presenting it from the perspective of the researcher.*

4.3. Research design

This research is designed as comparative exploratory study based on the case of Oman, which sought to collect and analyse data relating to Oman's experience and obligations under two different trading approaches; the multilateral WTO approach and the bilateral FTA approach. The comparative design of the study has enabled the researcher to evaluate the opportunities and policy choices facing Oman under each trading approach, distinguish the characteristics of each approach in different trade-related dimensions, and contrast findings

(Brayman, 2004, pp.53-55). In other words, comparisons have provided the necessary analytical framework for examining and explaining the legal and contextual differences between the WTO and the FTA. This comparative framework has enabled the researcher to gain greater awareness and a deeper understanding of the reality of the obligations and the policy choices facing Oman in different contexts of the two trading approaches. As Pentti Routio (2007) puts it; *comparison is one of the most efficient methods for explicating or utilizing tacit knowledge or tacit attitudes*. In this study, the researcher explicates the difficult jargon of the trade agreements of the WTO and the FTA and reveals the attitude of trade policy makers and participants from different institutions in Oman towards each trading approach.

In addition, this research is a case study design based on Oman's membership to the WTO and the FTA. As is observed by Robert Stake (1995, p.xi): *[c]ase study is the study of the particularity and complexity of a single case, coming to understand its activity with important circumstances*. Similarly, Robert K. Yin (cited in Soy, 1996) defines the case study method as an *empirical inquiry that looks into a contemporary phenomenon within its real-life, when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used.* For this research, the case study design is clearly reflected in the detailed and intensive analysis of the single case of Oman and has enabled the researcher to thoroughly understand and comprehensively investigate Oman's particular commitments and policy choices faces Oman under the WTO and the FTA.

A common criticism of the case study is related to its restricted nature to a single case and thus, results obtained from it cannot be generalised. However, for proponents of the case study research method with whom I place my view, it is this restricted nature of the case study design that makes it distinctive from other research designs. The whole purpose behind conducting a case study is to confine findings to that particular case, without generalising them to other cases or to population beyond the case (Soy, 1996; Bryman, 2004). Hence, while the limited nature of the case study method is seen by some people as a weakness, it is regarded as the notable advantage of the method by its supporters. Therefore, the case study research is of a complete contrast to survey research design where researchers intend to generalise their findings to large populations. They repeatedly employ random sampling to augment the representativeness of the samples on which they perform their enquiry and thus the external validity of their findings (Bryman, 2004). But, these are not the purpose of the

case study research method, where findings strictly apply to the particular area or issue of study without extending it to outside elements.

As this research is based on the case of Oman, its findings strictly applies to Oman's experience and the policy choices facing it under the WTO mutliateral approach and the bilateral FTA approach. There are many WTO members that signed FTAs with the U.S. from various parts of the globe for different reasons and incentives. The nature and details of their FTAs differ from the FTA of Oman. Their trading activities with the U.S. are also different from that of Oman. Even their obligations under the WTO can be different from Oman. Thus, by no means could the findings of this research be generally extended and commonly applied to other U.S. FTA partners. Although these findings can arguably be useful for other WTO members that have FTAs with the U.S. to learn from, but not necessarily can these findings be applicable to them.

4.4. Research strategy

Based on inductive strategy, this study has sought to achieve its objectives and answer the main questions of the research by collecting the required data, analysing them, and then drawing its general findings about the policy choices facing Oman under the multilateral WTO approach and the bilateral FTA approach. Hence, the findings of the research have been generated out of the data collected and analysed throughout the period of the study. This inductive strategy is different from the deductive strategy where the research starts from a theory from which hypotheses are deducted and then tested to find out whether they confirm or reject the theory. But, under the inductive strategy, data collection and analysis lead to the discovery of a "theory", which implies that the "theory" already exists in reality and the whole purpose of the research is to discover that reality. This is termed the "grounded theory", which is, according to Anselm Strauss and Juliet Corbin (1998, p.12), is *derived from data, systematically gathered and analysed through the research process. In this method, data collection, analysis, and eventual theory stand in close relationship to one another.* The concept "grounded theory" was firstly developed by Barney Glaser and Anselm Strauss (1967) in their famous book *The Discovery of Grounded Theory: Strategies for Qualitative Research.*

For this comparative research, the secondary data -- directly obtained from WTO agreements and publications, the FTA relevant chapters, and official reports issued by different ministries

and Government institutions on Oman's trade -- and the primary data collected from the semi-structured interviews and focus groups have been all analysed to discover the following generalisation: "WTO arrangements are more flexible than the FTA provisions, and the policy choices facing Oman under the WTO are better and greater than under the FTA". Hence, this generalisation already exists in reality and the researching processes of this study have lead to its unearthing.

4.5. Data collection: triangulation: three complementary qualitative research methods

Due to the complexity of studying and analysing Oman's policy choices in the WTO in comparison with the FTA, it was found necessary to use three different qualitative methods, so that various amount of data could be collected and a comprehensive picture of Oman's involvement in the two different trading approaches could be obtained. These methods are: 1) official documents, 2) semi-structured interviews, and 3) focus groups. This process of incorporating different research methods for data collection is termed "triangulation" (Olsen, 2004; Burgess, 1984; Asutay, 2008).

4.5.1. Official documents

The first research method is using official documents as direct sources of data (Brayman, 2004, pp.386-387). The researcher allocated three groups of official documents from which data were collected on Oman's membership to the WTO and the FTA. The first are those related to the WTO and entail; actual legal texts of different agreements on different sectors and issues that were selected as a sample of the research analysis (see below), WTO reports on trade issues such as the annually published "World Trade Report", the texts of Ministerial declarations, and reports of different working parties. This group of documents also entail the special reports issued by the WTO on Oman such as the "Report of the Working Party on the Accession of Oman to the World Trade Organization" issued on September 28, 2000, and "Trade Policy Review Report" issued by the Trade Policy Review Body on Oman's trade on May 21, 2008, and Oman's schedules of commitments under the GATT and GATS. It also entails official documents that are issued by the relevant Government institutions in Oman such as the MOCI, MNE, and Tender Board, on the occasions of negotiating and entering the WTO.

The second group of documents entails some of the chapters of the FTA that are specifically relevant to the units of analysis. This group also includes official reports published by the Governments of Oman and the U.S. on the occasions of negotiating and signing the FTA. The

third group is related to other official documents issued by different Government institutions which contain sections or chapters on Oman's trade activities such as the annual reports of the MNE, CBO, and MOCI and official statistics on different sectors issued by these entities. Some of these documents are in the public domain but others are not as they were obtained by the researcher via his private interactions with some employees in these institutions.

4.5.1.1. Sampling

The WTO and the FTA consist of a population of a wide-range of agreements and chapters (see appendices 1.1 and 3.4). Analysing all of these documents goes beyond the context and limitations of any research. Therefore, the data collected from the above-mentioned documents and their subsequent analysis have been focused on a sample[1] of eight specific trade-related areas (units of analysis); namely market access for goods, rules of origin, dispute settlement, labour standards, textiles and clothing, government procurement (GP), telecommunications, and investment. These areas are selected for different reasons. For instance, GP, telecom, and investment are of great importance for any small developing country such as Oman, as they are used as tools to help develop national industries. Hence, analysing how they are addressed under the WTO in comparison with the FTA and exploring the similarities and differences between their legal provisions are very important for Oman.

Textiles and clothing was at one stage of time one of the most productive non-energy sectors for Oman but its performance declined sharply after the full incorporation of this sector into the normal rules of the WTO/GATT. Thus, it was found important to assess the performance of this sector under the two different trading approaches and evaluate whether the FTA could provide better opportunity for the revival of this sector. Also, labour standards, GP, and investment are ones of the most problematic issues between developed and developing countries. Whereas the former have always attempted to incorporate these issues into the WTO legal system, developing countries have consistently refused to do so. But, these issues are made part and parcel of the FTA and Oman must abide by them. Hence, it was significant to analyse how the FTA addresses these WTO plus issues. Furthermore, issues such as rules of origin and dispute settlement are by their nature very relevant to any trade agreement and their

[1] The term "sample" is defined by (Fridah, 2008) as *a finite part of a statistical population whose properties are studied to gain information about the whole.* The term "population" refers to *a group of individual persons, objects, or items from which samples are taken for measurement.* Hence, for our study, WTO agreements and FTA chapters are the population, and the above-mentioned issues are the sample.

analysis should be essential for any study on trade agreements. Thus, it was important to investigate how each of these issues differs under each trading approach and which approach provides more flexible arrangements for Oman.

4.5.2. Semi-structured interviews[2]

The second method of data collection is "semi-structured interviews" which is more flexible than structured interviews and stricter than unstructured interviews. The study did not seek to receive "yes" or "no" answers as is normally the case in structured interviews, but went beyond that to understand the respondents' opinions and evaluate their experiences about the MTS and the FTA. Semi-structured interviews were conducted in the period (September 2007 - January 2008) and sought to collect data on the following topics; 1) the costs and benefits of Oman's involvement in the WTO and the FTA, 2) Oman's negotiating experience under each trading approach, 3) the future of the WTO and the MEFTA project, 4) the extent to which important elements of the Omani society such as Majlis Al-Shura, Majlis Al-Dawla, business community, and the academia were involved in negotiating and reviewing free trade agreements, and 5) interviewees' opinions on issues such as labour, environment, and GP that are included in the FTA but not in the WTO. These topics were intentionally selected to obtain as much data as possible on the different issues and events related to Oman's membership to the two trading approaches, so that a comprehensive analysis and thorough discussions could be made.

By conducting open-ended questions (see Appendix 4.1), the researcher was able to explain the questions to the interviewees and exchanged discussions with them. Also, the researcher was free to ask about additional topics that arose during the interviews which may have not even been anticipated in the interview preparatory plans. This flexibility enabled the researcher to collect more data (see Bowling, 1997). Limited time was provided for Omani negotiators in the FTA, resulting in their feeling of being pressurised by the MOCI to finalise the FTA negotiations. This and the substantial shortage of Omani legal experts during the negotiations were all examples for the unexpected additional information that arose during the interviews (see chapter seven). In short, by using the method of the semi-structured interviews, this study went beyond the fixed-answers to seek justifications, interpretations, and predictions of the interviewees' experiences and opinions about Oman's involvement in the FTA and WTO.

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[2] Semi-structured interviews are variously described as in-depth interviews, focused interviews, open-ended interviews. These terms are interchangeably used in the literature to mean almost the same thing (see Fontana and Frey, 1994; Gillham, 2000; Wengraf, 2001, Liamputtong and Ezzy, 2005).

These flexibilities do not exist in structured interviews where a set of questions and answers are positioned to be applicable to all respondents. The design of structured interviews schedule must be carefully undertaken, and *must meet numerous criteria in order to achieve its goals effectively* (Fowler, 2004, p.1094). Words of questions have to be understood by all respondents in the same way. Hence, if the questions include ambiguous words or vague sentences, they might lead to bad research results as respondents will be answering the questions from different ways of understanding. Thus, the questions in structured interviews should be designed to ask about things that all respondents can answer on the same basis of understanding the meaning of the questions. If interviewers have to re-phrase the questions for some respondents in order to make them better understand the meanings of these questions, different interviewers may end up asking different kinds of questions, which will affect the outcome of the interviews and consequently the results of the study (Fowler, 2004). Therefore, in structured interviews, great emphasis is required on asking questions in the same way every time and in the exact manner and emphasis, so that certain common behaviour of respondents can be established (Liamputtong and Ezzy, 2005). Moreover, in structured interviews respondents are supposed to choose from a list of answers in order to answer a question. As the answers need to fit the question, interviewers need to *provide an exhaustive and extensive list of all possible answers* that respondents might provide (Fowler, 2004).

On the other hand, however, interviewers in unstructured interviews are free to decide what topics to ask and how to phrase the questions (Fowler, 2004). They conduct an informal discussion that has no strict guidelines. Normally, these kinds of interviews can be good in the initial stages of any project as interviewers seek to get a general understanding of the problem. Nevertheless, the method of unstructured interviews is too general and the interviewers have no control on the issues discussed. They can also be time consuming and difficult to analyse. Obviously, this type of interviews does not serve the purpose of this study, which focuses on certain areas related to Oman's positions under the WTO and the FTA. Therefore, the above-mentioned difficulties of structured and unstructured interviews were avoided in this study. As is indicated above, by conducting semi-structured interviews the study aimed to explore *the complexity and in-process nature of meanings and interpretations* (Fowler, 2004) of different topics related to the FTA vis-a-vis the MTS. Complex questions and issues were discussed and explained (Sociological research skills, 2007). The researcher was able to stimulate the interviewees to express their opinions, experiences, and knowledge of Oman's position under

the WTO and the FTA in great details and encourage them to explain the meaning behind certain actions taken under both systems (see Brooks, 1994; Holstein and Gubrium, 1995).

4.5.2.1 Sampling

The semi-structured interviews were conducted with thirty three people from different Government and academic institutions, business community, Majlis Al-Shura (the consultative council), and Majlis Al-Dawla (the state council) (see table 4.1 below). The interviewees from Government institutions such as the MOCI, MNE, and Tender Board (TB) were chosen either due to their experiences in negotiating Oman's membership to the WTO and the FTA or, as for some, due to their direct involvement in the daily administrative paper work on trade issues. Interviewees from other institutions were selected on the basis of their working experiences or their professional speciality in their institutions, or their knowledge about the economic development of Oman. As Herbert Rubin and Irene Rubin (1995, p.66) put it; *people that you interview should be knowledgeable about the cultural arena of the situation or experience being studied.*

Table 4.1: Details of interviewees

Institutions	Number of interviewees	Total
Ministry of Commerce and Industry	- Four from the Directorate General of Organizations and Commercial Relations. - One from the Directorate General of Trade. - One from the Minister Office. - Oman's representative in the WTO headquarters in Geneva. - An expatriate advisor to the MOCI on WTO issues and free trade agreements.	Eight
Ministry of National Economy	- Undersecretary for Economic Affairs. - Three from the Directorate of Economic Relations (Muscat) - One from the General Directorate of Production Sectors Development	Five
Majlis Al-Shura	- A researcher in the Office of Information and Researches. - An economic experts (expatriate) in the Office of Information and Researches. - Two ex-Shura members	Four
Majlis Al-Dawla	- One member	One
Ministry of Legal Affairs	- Two legal experts	Two
Oman Chamber of Commerce and Industry	- Head of OCCI (Previous) - An economic researcher. - A board member in the OCCI	Three
Private sector	- Two high senior staff from Bank Muscat. - One senior staff from Oman Air	Four

	- One individual businessman	
Tender Board	- An expatriate expert - A senior employee (Head of section)	Two
Telecommunications Regulatory Authority	- A specialist in information technology	One
Ministry of Manpowr	- One employee	One
Academics	- Two from the Sultan Qaboos University.	Two
Total		Thirty three

Source: Compiled by the author (2008).

4.5.3. Focus groups

The third method of data collection is "focus groups"; a tool that has become increasingly important in social sciences for the last two decades (Morgan, 1996, Gibb, 1997). The term "focus group" is attributed to the pre-World War II work of sociologist Robert King Merton as a result of which he became to be known as *the father of focus group* (Merton and Kendall, 1990). The technique of focus groups gained popularity during the late 1950s more in business studies as market researchers sought to understand consumer purchasing behaviour. But, for social sciences the method have only become more noticeably important from the 1980s onwards when academic researchers have increasingly started to use the method in their researches (Krueger, 2004). One can find many definitions for the term "focus groups" in the literature, but they mostly refer to the same thing. For example, Khan and Manderson (1992, p.57) describes a focus group as a qualitative research method with *the primary aim of describing and understanding perceptions, interpretations, and beliefs of a select population to gain understanding of a particular issue from the perspective of the group's participants.* Powell, Single, and Lloyd (1996) [cited in Gibb, 1997, p.2] defines a focus group as *a group of individuals selected and assembled by researchers to discuss and comment on, from personal experience, the topic that is the subject of the research.* Thus, when referring to a focus group it clearly implies that group interactions and discussions are organised to explore a specific set of issues based on participants' views and experiences on these issues (see Kitzinger, 1994). Hence, the group is "focused" in the sense that it involves some kind of collective activity such as, in the case of this study, debating a particular set of questions on Oman's trad under the two trading approaches; multilateral (WTO) and bilateral (FTA).

The method of focus groups was found suitable for the purpose of this research as it acted as a supportive and complementary technique to the methods of official documents and semi-structured interviews (Carey, 1995; Robson, 2002). The content analysis of the data collected via official documents and semi-structured interviews has revealed that the Oman-U.S. FTA is

politically driven and that the WTO better addresses Oman's trade interests and provides it with more flexible and considerate arrangements than the FTA. These results have prepared the ground for the researcher to move forward and analyse the question of the future of the economy of Oman under the two trading approaches, particularly when considering the difficulties facing the Doha Round and the political changes in the U.S. Administration. Also, Oman's future trade relations with three important regional economies, namely China, Iran, and India were considered in the focus groups, as a case can be argued for more geopolitically diversified trade. Thus, for the purpose of data collection, discussions on the above-mentioned issues were conducted in two focus groups. The first group took place in the MOCI on March 25, 2008 and the second in the MNE on March 29, 2008.

4.5.3.1 Sampling

Participants of each focus group were mainly employees from the two ministries and were selected due to their direct professional involvement in handling trade issues particularly those related to the WTO and the FTA and their experiences and knowledge about the economy of Oman and its trading activities. Some scholars argue that focus groups should consist of strangers. In other words, participants should not know each other before as they would be more encouraged to reveal greater details about their experiences and knowledge on the topic under discussions than in cases when they are familiar with each other (see Gibb, 1997; Litosseliti, 2003; Kitzinger, 1995). However, for Morgan and Krueger (1993) – with whom I place my opinion - this view is no more than a myth. On the contrary, they argue, groups that consist of strangers would be difficult to conduct and administer. Being familiar with each other -- as was the case in the two focus groups of this study -- participants tend to be more frank and transparent with each other. Participants need to feel that they know each other and share similar concerns and understandings about a given topic (Morgan and Krueger, 1993). This was clearly realised by the researcher in the discussions of the two focus groups. As the participants of the two groups were from the same working environment and shared similar background and experiences, their interaction revealed valuable information for this study, as discussed in chapter eight. As Morgan (cited in Liamputtong and Ezzy, 2005, p.81) puts it; *the hallmark of focus group is their explicit use of group interaction to produce data and insights that would be less accessible without the interaction found in a group.*

Furthermore, in each focus group there were some participants who were already familiar with the research topic as they had been interviewed by the researcher during the process of the

semi-structured interviews. This made it easy for the researcher to administer the discussions; thus building them on previous findings. The researcher carried out the role of the "moderator" for the two groups. The moderator is the one who introduces the topic, the purpose of the group, and help people feel relaxed (Rubin and Rubin, 1995). More importantly, the moderator stimulates interaction between group members, by asking questions and promoting debate and encouraging all members to participate; a task that was effectively carried out by the researcher (Carey, 1994; Gibb, 1997; Liamputtong & Ezzy, 2002). In each focus group, the researcher directly took notes about the issues discussed. He also used the assistance of his friends to write their own notes, which proved very helpful for the researcher. Table (4.2) below outlines some details about the two focus groups.

Table: 4.2: Details of the two focus groups

Areas	**MOCI focus group**	**MNE focus group**
Place	Directorate General of Organizations and Commercial Relations in the Ministry of Commerce and Industry – Muscat	Directorate of Economic Relations in the Ministry of National Economy – Muscat
Date, time, and duration	25 March 2008: from 830 – 1130 am (3 hours)	29 March 2008: from 9-1030 (one hour and a half)
Number of participants	- 11 participants, including the researcher. - 9 of the participants worked at different levels in the MOCI in the Directorate General of Trade (Statistics) and Directorate General of Organizations and Commercial Relations. - One participant was from the Oman Chamber of Commerce and Industry (OCCI). - The researcher tried to involve three other participants from other different ministries, but they apologised for not being able to come due to other commitments.	- 7 participants, including the researcher. - The group was initially planned to include 10 participants, but unfortunately 3 participants did not turn up. They only apologised for not being able to attend due to unexpected circumstances just one day before the discussions. - All participants were from the Ministry of National Economy.
Qualifications	- 1 participant was a PhD holder. - 3 participants were Masters holders - 1 participant was an expatriate expert on trade issues. - Others entertained long experience in trade issues.	- 1 participant was a PhD holder. - 3 participants were Masters holders. - 2 participants were expatriate experts and worked as advisors to the Minister of MNE. - One of these advisors entertained very long experience that exceeded 25 years on the economy of Oman.

Source: Compiled by the author (2008).

4.6. Data analysis

4.6.1. Official documents

Data collected from the official documents of the WTO and the FTA are analysed by using the textual analysis (content) approach[3], which is regarded as one of the most important research analytical tools in the social sciences (see Bryman, 2004, p.392). Under textual analysis, data are looked at from the angles of texts, passages, expressions, and detailed wordings and then interpreted according to their meanings. Thus, specific evidence from a text is used to justify a view about the text. Unlike in natural sciences where researchers endeavour to separate their own convictions from object of study to reach objective outcomes, researchers in textual analysis reflect their own interpretations to the meanings of the texts they study (see Bryman, 2004; Krippendorff, 2004). As Alan McKee (2003, p.1) puts it; *when we perform textual analysis on a text, we make an educated guess at some of the most likely interpretations that might be made of that text.*

For this study, by analysing texts of official documents related to the WTO, FTA, and Government's institutions in Oman, the researcher has sought to investigate how each of the above-mentioned trade area (unit of analysis) is dealt with under the WTO and how it is addressed in the FTA, so that a determination could be made about which of the two trading approaches provides more flexible arrangements and better considers the interests of the small economy of Oman in that particular unit of analysis. This approach of the textual analysis of the data collected from official documents is carried out in two stages; interpretative and codifications.

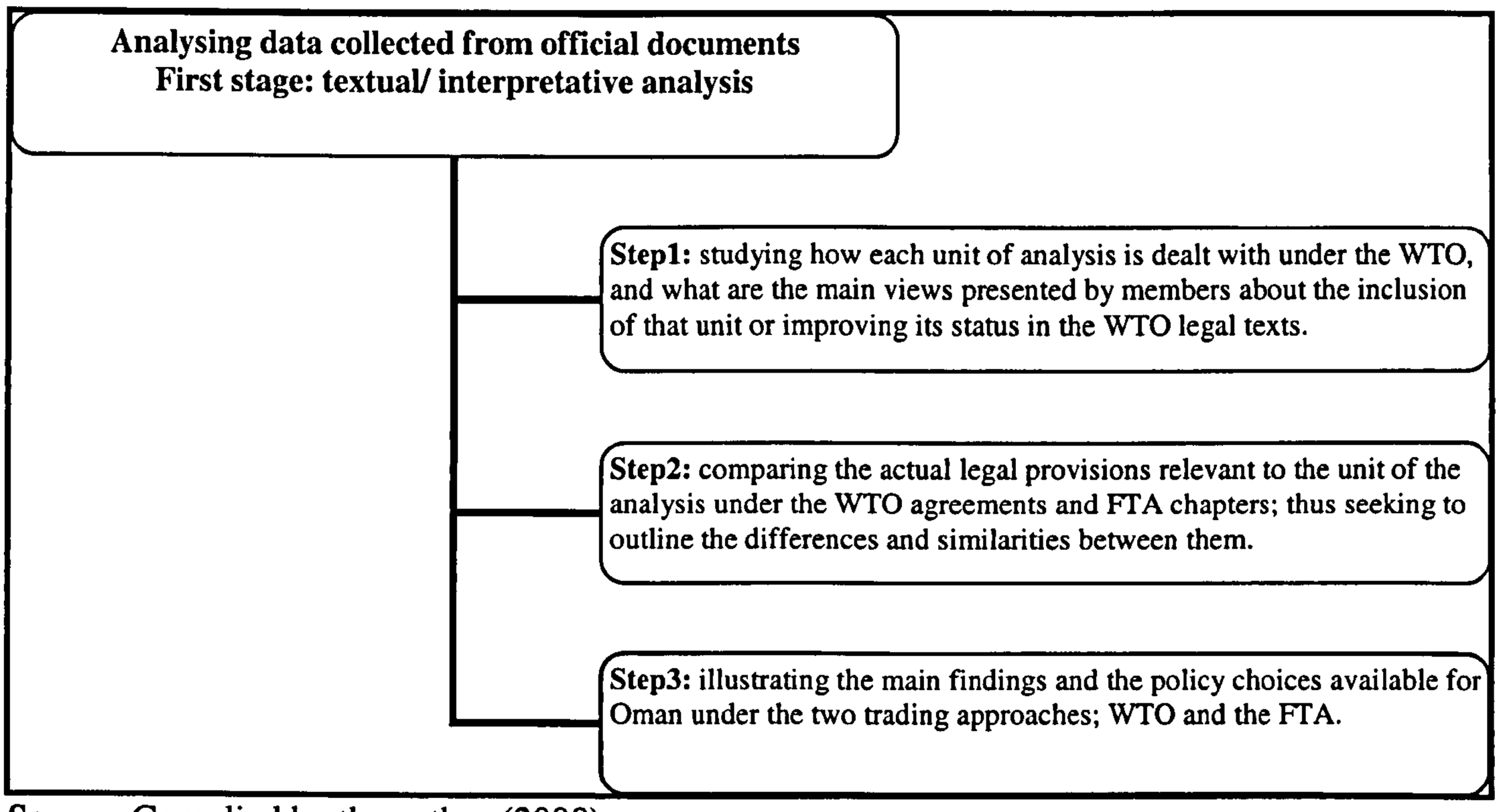
4.6.1.1. First stage: textual/interpretative analysis

The first stage of the textual analysis of the data collected from official documents is mostly explanatory, thoroughly illustrative, and systematically descriptive with interpretative objective. As is demonstrated in chapters five and six of the thesis, the analysis starts by studying the background of each unit of analysis under the WTO and exploring different views of members; developed and developing, about incorporating it into the WTO legal system or improving its relevant provisions in the on-going multilateral negotiations (step one). This is

[3] "Textual" analysis is one form of "content" analysis. Both terms are used interchangeably in the literature but as the analysis under this section deals solely with official documents, the term "textual" is preferred for this particular context. According to 1961 edition of the Webster's Dictionary of the English Language (cited in Klaus Krippendorff, 2004, p.xvii), content analysis is defined as an *analysis of the manifest and latent content of a body of communicated material ... through classification, tabulation, and evaluation of its key symbols and themes in order to ascertain in its meaning and probable effect.*

then followed by interpreting and analysing the relevant WTO provisions in comparison with similar provisions under the FTA chapters on each unit of analysis (Prior, 2003; Fairclough, 2003). The objective is to explore the differences and similarities and investigate whose provisions are more flexible, comprehensive, and comprehensible than the other (step two). Thus, in many cases, where the researcher seeks to demonstrate his view, the exact texts of the articles or clauses are directly quoted. At the end of the analysis of each unit, an illustrative summary is made on the main findings discovered from the analysis with specific emphasis on the policy choices that could be available for Oman under the WTO and the FTA (step three) (see figure 4.1 below).

Figure 4.1: Thematic steps undertaken for analysing data collected from official documents



Source: Complied by the author (2008).

4.6.1.2. Second stage: codification analysis

The second stage of the textual analysis of the data collected from official documents is "codification" (see Bryman, 2004, pp.392-393). Through this process the very detailed findings of the research that are thoroughly illustrated in chapters five and six of the study are re-arranged in a more systematic order based on common categories. The objectives are to present the analysis in a much simpler, but more rigid and codified, manner. The analysis is broken down into general categories. Each general category represents a particular issue or point and consists of four other smaller categories. The first explores

how the particular issue of that category is addressed in the WTO and the second illustrates how the issue is addressed under the FTA. The third category highlights the policy implications for Oman on the particular issue. This category is divided into two smaller sub-categories; policy implications for Oman under the multilateral approach and under the bilateral FTA approach. The last category underlines the theme of the overall outcome of the analysis. An example for that is provided in table (4.3) below.

Table 4.3: Example of textual analysis (codification) of document analysis

Category	**Incorporating labour standards in trade agreements**	
Focused coding		
Multilateral WTO approach	- Developed countries attempted to incorporate labour standards into the WTO legal texts. - But, developing countries strongly opposed such an approach because labour standards are not trade issues and dealt with by the International Labour Organisation (ILO). - Developing countries feared that labour standards would be used by developed countries as means of protection against exports from developing countries. - At Singapore MC (1996), the issue was dropped completely from the multilateral negotiations.	
Bilateral FTA approach	- Labour standards are made part and parcel of the FTA (chapter 16).	
Policy implications for Oman	**Multilateral approach**	- Oman's trading activities are not linked to labour standards. - Oman's implementation of labour standards is dealt with via the ILO, not the WTO.
	Bilateral approach	- Oman must abide by the very strict rules of chapter 16 of the FTA. - Oman's trading activities are linked to labour standards. - Not abiding by the strict rules of the FTA on labour could make Oman subject to the dispute settlement of the FTA. - If Oman was proven not to be abiding by measures related to labour issue in the FTA, Oman could end up paying a financial penalty that can reach $15 million annually.
Theme	The multilateral WTO approach regarding labour standards is more flexible and provides Oman with better policy choices than the FTA.	

Source: Compiled by the author (2009).

4.6.2. Semi-structured interviews

4.6.2.1. First stage: content/narrative analysis

As is the case of the textual analysis, semi-structured interviews are analysed in two main stages. The first stage is a combined approach of "content/narrative" analysis. Content analysis is firstly used when the data are sorted out and organised in different sub-headings, according to their similarities and differences. For example, when asked about reasons for the delay of Oman to become an official member to the WTO, which only took place in

November 2000, various, and sometimes complex, views were provided. Thus, the researcher endeavoured to analyse these data systematically by dividing them into two main subheadings; the first entails the views of those who felt that Oman's delay to become a member to the WTO was due to the protectionist and monopolistic policies that characterised Oman's political economic thinking in the 1980s and early 1990s. The second includes the views of those who thought that Oman's membership to the WTO was a natural step to its economic development and had nothing to do with any protectionist or monopolistic policies.

This approach of analysing the contents of the interviews into structured sub-headings enabled the researcher to pursue a narrative analysis approach through which the researcher was able to comprehensively elucidate the experiences, views, impressions, and feelings of the interviewees about Oman's involvement in two different trading arrangements; the WTO and the FTA. As Marguerite Stevens (2008, p.8) points out: *after taking our data apart to get at essence, we also could gain valuable insights by putting the data together, not in their raw form, but in re-ordered form to tell stories from the point of view of different participants.* In most of the issues raised during the interviews, the narrative analysis proved very useful in illustrating the responses of the interviewees including their feelings and opinions about certain topics. For example, the narrative analysis was practically helpful in exploring the negotiating experiences of some interviewees under the WTO and the FTA, how they prepared for the negotiations, and their feelings about the outcome of the negotiations. Likewise, the narrative analysis was helpful in reflecting the views of the interviewees from the business community, academia, Majlis Al-Shura, and Majlis Al-Dawla, who all felt isolated from Governments' decisions relating to the WTO or the FTA memberships. Overall, the narrative analysis has enabled the researcher to analyse the data in a form of a story that starts with the economic developments of Oman before joining the WTO until the time of the FTA negotiations (chapter seven). As Bryman (2004, p.412) comments, narrative analysis is *the ways that people recognize and forge connections between events and the sense they make of those connections that provides the raw material of narrative analysis.*

4.6.2.2. Second stage: codification analysis

As is the case of documents analysis, the very detailed content/narrative analysis that is comprehensively illustrated in chapter seven, is re-produced in a much simpler codified

manner. The analysis is divided into common categories. Each category represents a question or an issue covered during the interviews. Each general category is divided into other smaller categories, which, for some cases, are further broken down into smaller sub-categories. The number of participants who expressed or shared the particular view in each small category is outlined. Each codified table ends with a category that provides the thematic finding of the analysis. An example for the codification analysis of the semi-structured interviews is provided in table (4.4) below.

Table 4.4: Example of content analysis (codification) of semi-structured interviews

Category		**Under which trading approach was Oman better prepared for the negotiations?**
Focused coding		
	Interviewees	
Preparations for negotiations to accede the WTO	**Four**	- Oman prepared well for the negotiations. - Before the start of the negotiations, Oman was an observer to the WTO. - Oman conducted feasibility studies about the impact of the WTO before the negotiations. - Oman consulted some developing countries and experts on WTO issues. - Oman had a clear idea about the kind of liberalisation commitments it should make or those it should not make during the negotiations.
Preparations for the FTA negotiations	**Six**	- Oman's preparations for the negotiations were very modest. - No feasibility study was conducted on the impact of the FTA on Oman's trade. - Negotiators did not have much idea about the details of the chapters they were going to negotiate on. - Negotiators were given a very short period of time to prepare for the negotiations. - They were asked to study the Bahrain –U.S. FTA, as a basis for the Oman-U.S. FTA negotiations but not all negotiators managed to do so. - A special team from different Government institutions visited Bahrain to learn from its FTA experience. The visit was beneficial.
Theme		Oman was better prepared for the multilateral negotiations than for the FTA negotiations.

Source: Compiled by the author (2009)

4.6.3. Focus groups

As is the case in the semi-structured interviews, data collected from the focus groups on the future of Oman's trade under the WTO and the FTA and its trade relations with China, Iran, and India have been analysed through two stages; content/narrative and codification analyses.

4.6.3.1. First stage: content/narrative analysis

Data collected from each focus group were classified into different headings that cover the main areas of discussions namely; the impact of the proliferating phenomenon of PTAs on the WTO, the extent to which the FTA with the U.S. is fair for the small economy and trade of Oman, the implications of changes in the U.S. Administration on the FTA, the future of Oman's trade in light of the current obstacles facing the economy, and Oman's trade relations with some important regional economies; China, Iran, and India. Each of these main headings is divided into smaller subheadings which reflect in detail the content of discussions in each group. Similarities and differences between data collected from each group as well as the views of participants within each group are clearly highlighted and comprehensively analysed in a narrative manner. Thus, opinions, arguments, and feelings of participants towards certain issues of discussion are clearly illustrated and emphasised. Also, the narrative approach helped the researcher justify reasons behind asking certain questions or raising a particular issue or comment during the discussions, which could not be achieved via another approach of analysis (see chapter eight).

4.6.3.2 Second stage: codification analysis

The comprehensively narrated results of the discussions of the two focus groups are re-produced in codified categories through which general themes are made on each area of discussions. Each common category is divided into other smaller categories, which, for some cases, are further broken down into smaller sub-categories. For each sub categories the number of participants of the MOCI and MNE focus groups who shared the particular view of the subcategory is outlined. Each codified table ends with a category that stipulates the theme that can be made on that particular issue of discussions. An example is provided in table 4.5 below.

Table 4.5: Example of content analysis (codification) of focus groups

Category	**The implications of changes in the U.S. Administration on the Oman-U.S. FTA**		
Focused coding			
	Participants	**Focus group**	**The views**
Revival of FTAs under a Republican Administration.	One One	MOCI MNE	- If the Republican candidate, Johan McCain had taken over the U.S. Presidency, the U.S. would be motivated to implement the Oman-U.S. FTA to demonstrate to other MEFTA candidates the success of its model of FTAs.
Less enthusiasm towards FTAs under the Democrats Administration.	One One	MOCI MNE	- Under Barack Obama's Presidency, the U.S. policy will be drifted more towards multilateralism and less attention will be given to the Oman-U.S. FTA.
	One	MOCI	- Under the Democrats' Presidency, the Oman-U.S. FTA could only be used as a political gesture that would be referred to in some occasions, without having direct effects on trade activities between the two countries.
Global developments determine U.S. drift towards either bilateralism or multilateralism	One	MOCI	- U.S. enthusiasm towards FTAs or the WTO will be more determined by the success of Doha negotiations and the readiness of other influential players such as the EU, Japan, India, Brazil, and China to move the multilateral negotiations forward.
	One	MOCI	- Many Democrats in the Congress will support the bilateral routes if issues such as labour and environment continued to be difficult to incorporate in the WTO legal system.
Oman-U.S. FTA will not be affected by the trade policy of the new U.S. Administration	Others	MOCI MNE	- Changes in the U.S. Presidency will not affect the implementation of the Oman-U.S. FTA, because the FTA was already signed and ratified and would be put into practice.
Theme	The new U.S. Administration may favour the multilateral route. But, if the U.S. agenda is not served by the Doha negotiations, the U.S. may divert to bilateral routes. The trade policy of the new U.S. policy may or may not affect the implementation of the already signed Oman-U.S. FTA.		

Source: Compiled by the author (2009)

4.7. Observations, limitations, and difficulties

4.7.1. Semi-structured interviews

Conducting the semi-structured interviews and the two focus groups did not prove very easy as the researcher faced some limitations and difficulties. In the semi-structured interviews, some initially proposed candidates apologised for not being available for the interviews because either they claimed to be too busy, or the issue, in their views, was "very sensitive" and, thus, they were not authorised to talk about. Two candidates went as far as blaming the researcher

for choosing such a sensitive topic! Thus, the researcher had to modify his original lists of candidates and approach new ones. It appeared that approaching candidates via their friends, colleagues, or even relatives proved to be a more efficient way in convincing them not only to sit for the interviews but to reveal their experiences in a more transparent way, than approaching them directly. Also, some interviewees opened a window for the researcher to meet other people who proved to be quite informed about the FTA and WTO issues.

Nevertheless, the level of cooperation and transparency varied from one interviewee to another. Some interviewees were quite reserved and some others, particularly some FTA negotiators, appeared to be very defensive as they did not want to be blamed for easily agreeing with the U.S. demands. However, other interviewees, on the other hand, were very transparent and provided detailed explanations and critique about their experiences and views on Oman's involvement in the two trading arrangements. Also, the level of knowledge about the WTO and FTA issues differed from one interviewee to another. Those who handled the daily paper work on these issues in the MOCI, and to a lesser extent in the MNE, were unsurprisingly more informative than outsiders. Interviewees from the business community, Majlis Al-Shura, Majlis Al-Dawla, and the academia appeared to lack the knowledge and awareness about many trade issues. For some, terms such as the Doha Round, Doha Development Agenda, and the MEFTA project were not very familiar. Most interviews lasted between one to two hours. However, in some few cases, where interviewees proved to be very knowledgeable and transparent, lasted more than three hours.

Furthermore, the researcher also noticed that the interviewees were fairly open and transparent in reflecting their own experiences and opinions when discussing Oman's position in the WTO. However, they tended to be more reserved and cautious when talking about the FTA. They felt that the driving force behind Oman's endeavour to sign the FTA was more political than economic. Thus, for some interviewees, discussing this issue meant an intervention in the politics of the country, and they were careful not to be caught in the trap of talking about that. In order to encourage them to be more transparent to speak about their experiences and knowledge, the researcher assured them that their names would be kept un-exposed and the objective was not to discuss the politics of the country, but the whole purpose of the research was purely academic. Also, for more assurances, the researcher highlighted the nature and the main objectives of the research and how important the participants' views would be for the success of the research whose outcome would benefit the whole country. Some interviewees

responded quite well to these assurances and revealed good information, but others remained very cautious.

4.7.2. Focus groups

The researcher in the first place attempted to conduct one of the focus groups in the College of Commerce and Economy at the Sultan Qaboos University, but unfortunately the researcher's request was declined on the ground that the topic was sensitive and could stimulate unfavourable debate about Government's policy. Therefore, the researcher had to look for other alternatives. Only through private connections and personal relations did the researcher manage to conduct the two focus groups in the MOCI and the MNE. Difficulties particularly rose in relation to the provisions of the rooms in which the discussions of the two groups would be held and the types and number of candidates that should participate. However, with the assistance of the researcher's friends in these two ministries, many of the administrative difficulties were overcome. Discussions of the MOCI focus group were held in the office of a senior employee who also helped convincing other employees, who were handling trade issues and have negotiating experiences in the WTO and the FTA, to participate in the discussions. Similarly, discussions of the MNE group took place in the conference room of the main building of the Ministry. All participants were employees in the MNE. Some of them were involved in handling trade issues, and for some, had great knowledge and experience about the economic development of Oman.

It is worth-noting that some candidates were hesitant in the first place to participate in the discussions as they did not want to be involved in debating the politics of the Government particularly in relations to the U.S. FTA. They also did not want their names to be caught nor their voices to be recorded. Thus, upon the advice of his friends, the researcher prepared a summary about the thesis which clearly stated that the discussions would be very informal and outlined the thesis' aims, main contents, and the questions that were going to be discussed in the two focus groups (Appendix 4.2). The summary was found useful as participants had become more encouraged to participate and had some ideas about the nature of the discussions before their start. Also, the researcher endeavoured to convince some people from outside the MOCI and the MNE to participate in the discussions of the two focus groups due to their

interests and experience on trade issues.[4] But, unfortunately, they all apologised for not being able to come along for the discussions due to other commitments (see table 4.2). Thus, the two focus groups were strictly held amongst employees from the MOCI and the MNE, with the sole exception of one employee from the OCCI who participated in the MOCI group.

In the beginning of each focus group, some participants appeared quite reserved not to get involved in the discussions. Thus, the researcher had to reassure the participants that the discussions, as had been promised, would be informal, no tape-recording would be used, no names would be disclosed when writing up the results, and the results would be used purely for academic purposes. These assurances bore their fruits and discussions were conducted in a very relaxing, open, and transparent environment in both groups. In some occasions, certain participants tended to dominate the discussions, but the researcher tactfully sought to involve others and make discussions more comprehensive. In each focus group, the researcher directly took notes about the issues discussed. He also used the assistance of his friends to write their own notes, which proved very helpful for the researcher.

4.8. Conclusion

By conducting three different tools of qualitative methods, the researcher has managed to obtain important data about Oman's commitments under two different trading approaches; WTO and the FTA, and about the experiences and the views of participants from different Government institutions, Majlis Al-Shura, Majlis Al-Dawla, the business community, and academia on various issues related to Oman's involvement in these two trading approaches. The three methods complemented each other and collectively helped the researcher to obtain a comprehensive picture and conduct insight analyses (textual, narrative/content, and codification) on Oman's involvement in the two trading approaches. The findings of these analyses are thoroughly discussed in the following four chapters of the thesis.

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[4] One of these people was a legal expert from the Ministry of Legal Affairs, two lecturers from the Sultan Qaboos University, and three others from the business community, one of whom used to work in the Oman Chamber of Commerce and Industry (OCCI).

CHAPTER FIVE:
TEXTUAL AND CODIFICATION ANALYSES:
MARKET ACCESS, RULES OF ORIGIN,
DISPUTE SETTLEMENT, AND LABOUR STANDARDS

5.1. Introduction

This chapter represents phase one of the textual and codified analyses of the data collected from official documents related to; 1) the WTO legal texts, reports, and Ministerial declarations, 2) the FTA provisions and other relevant documents, and 3) official reports issued by different Government institutions on Oman's trade and economy. The units of the analysis of the chapter are: market access for goods, rules of origin, dispute settlement, and labour standards. The analysis reviews how each of these issues is addressed under the WTO in comparison with the FTA. The study finds out that in each of these issues WTO arrangements are more flexible for Oman than the FTA. Oman faces better policy choices and can better address its concerns and interests under the WTO than is the case under the FTA. The chapter starts with the textual analysis on the four aforementioned areas and then followed by the codified analysis in forms of tables in the end of the chapter.

5.2. Market access for goods: tariff and non-tariff measures

The term "market access" for goods normally refers to tariff reductions and the elimination or reduction of certain non-tariff barriers to import (WTO, Market Access for Goods, 2007b). However, it is important to note that there are also different subjects related to market access for goods such as; safeguards, rules of origin, balance of payment measures, countervailing duty and anti-dumping duty (Laird, 2002). Market access also relate to specific sectors such as agriculture and textiles (Daz, 1999). However, this section mainly concentrates on analysing market access in terms of tariffs and non-tariff measures under the WTO vis-à-vis the FTA in relation to Oman.

5.2.1. Market access under the WTO

All WTO members have made commitments to eliminate or reduce tariff rates and non-tariff measures applicable to trade in goods in different sectors. Tariff[1] commitments for goods are set out in each member's schedule of concessions on goods which are annexed to the GATT, thus they form an integral part of the GATT. Before the establishment of the WTO these concessions were made in the multilateral negotiations. Now, they are made by members upon their

[1] A tariff is defined as *a tax levied on products when passing a custom border* (Hoekman and Kostecki, 2001, p.147).

accessions to the WTO. Members' schedules represent their commitments to bind tariffs; i.e. not to raise tariffs above the listed rates (WTO, Understanding the WTO, 2007f). Hence, tariff binding acts as a benchmark for the conditions of market access that a country commits itself to. Thus, each member includes in its schedule the products on which it feels prepared to make tariff binding commitments. However, if a member wishes to raise tariffs on a product above the bound level in its schedule, it has to offer compensatory concession on some other items (Al-Bashbishi, 2003). Article XXVIII of the GATT outlines the procedure for this purpose which starts with an official notice made by the member that wishes to raise tariffs to the Council for Trade in Good. The Council then authorises a negotiation on the issue (WTO, GATT 1947, 1995c; WTO, Analytical index, GATT 1994, 2007g).

Non-tariff measures refer to any other measures that are used by some countries to restrict imports or impede their competitiveness in their national markets in favour of domestic businesses. These measures can entail, for instance, direct quantitative control and restriction on imports for certain products, import licensing, rules for the evaluation of goods at customs, pre-shipment inspection; i.e. further checks on imports, complicated rules of origin, and investment measures (Bijit, Kuwahara, and Larid, 2002). These measures, which are also called "grey measures", are prohibited under the Agreement on Safeguards (AOS), which sets time limits for their elimination (WTO, A Summary on Agreement on Safeguards, 2007h). Also, these issues are dealt with under specific WTO agreements such as; agriculture, anti-dumping, balance of payments, customs valuation, rules of origin, trade in textiles, and trade facilitation (Daz, 1999). The implementation of tariffs and non-tariff measures is supervised by the Committee on Market Access, which also provides a forum of consultation on issues relating to tariffs and non-tariff measures and ensures that *GATT Schedules are kept up-to date* (WTO, 2007h).

5.2.2. Market access under the FTA

In the Oman-U.S. FTA, market access for goods is dealt with under chapter two, which explores the parties' schedules of concessions and general notes to establish the agreed tariff treatment for goods that meet the rules of origin of the FTA. The chapter is divided into six sections in addition to the parties' schedules of concessions. The following paragraphs highlight its main contents.

5.2.2.1. National treatment and prohibitions of restricting imports or exports

Article 2.2.1 requires each party to *accord national treatment to the goods of the other party in accordance with Article III of GATT 1994 and its interpretative notes*. Ironically, the FTA uses

GATT 1994 as the basis for its national treatment principle (NT), while the FTA is itself based on discrimination as it requires both parties to solely accord NT to each other's traded goods without extending this treatment to outside parties. Article 2.8.1 prohibits each party from restricting or preventing imports of the other party or exports or sale for exports of any good destined for the territory of the other party; except in accordance with Article XI of GATT 1994. The latter, along with its interpretive notes, prohibits the use of quotas, import or export licenses, except in special circumstances that only aim to; 1) prevent or relieve critical shortages of foodstuffs, or other products essential to the exporting member, 2) apply standards or regulations for the classification, grading or marketing commodities in international trade, and 3) restrict imports of any agricultural or fisheries product so that government measures can be applied to restrict the quantities of the like domestic product permitted to be marketed or produced, or to remove a temporary surplus of the like domestic product (WTO, 1995n).

Moreover, there are exceptions that are stated in Annex 2-A where the obligations of Articles 2.2 and 2.8 of the FTA do not apply. Arguably, these exceptions seem to be designed to serve more the interests of the U.S. For example, according to paragraph (a) of Section "A" of Annex 2-A, the U.S. is exempted from the obligation of NT and from the commitment of allowing Oman's products free access to the U.S. market on *the export of logs of all species*. This exemption is strictly applied to the U.S., not Oman. In other words, Oman must treat U.S. exports of logs indiscriminately with Omani national products of similar types and cannot restrict their access to the Omani market. But, the U.S. on the other hand, has the right to apply such restrictions. Annex 2-A also states that actions authorised by the Dispute Settlement Body (DSB) of the WTO are also exempted from the obligations of Articles 2.2 and 2.8. However, although this exemption applies to both Oman and the U.S., it would likely benefit the U.S. more. This is because the U.S. is far more actively involved in the multilateral dispute settlement process than Oman, which has never entered into any dispute with any other WTO member.

5.2.2.2. Tariff elimination

Article 2.3.1 of the FTA prevents the two parties from increasing any existing tariffs, or adopting any new customs duty, on an originating good; i.e. a good that meets the required rules of origin of the FTA. Article 2.3.2 obliges both parties to progressively eliminate tariffs on their goods according to their Schedules of Annex 2-B. The two parties can consult each other to further accelerate the elimination of customs duties set out in their Schedules. The newly accelerated elimination shall replace any duty rate or staging category already stated in the Schedules (Article 2.3.3).

However, there are three exceptional situations under which a party can stop reductions of tariffs or increase a customs duty. Firstly, Article 2.3.4.a enables a party to *raise a customs duty back to the level* stated in its schedule *following a unilateral reduction*. For instance, Oman agreed to progressively reduce tariffs on tobacco to zero percent within nine years of the implementation of the FTA. If Oman unilaterally reduced tariffs on tobacco to zero after two years of the implementation of the FTA, it can still raise tariffs back to the level stated in its Schedule. Secondly, Article 2.3.4.b permits the two parties to *maintain or increase a customs duty as authorized by the Dispute Settlement Body of the WTO*. Hence, once again, as the U.S. is a major user of the multilateral dispute settlement, it would be able to benefit form this exception more than Oman. This permission implies that if the U.S., for instance, won a dispute at the WTO level against any other member as a result of which the U.S. was able to maintain or increase a customs duty on a particular product, it can use the DSB decision to increase customs duty in its trade deals with Oman, even though Oman had never been a party to that dispute. Hence, the U.S. can exploit its disputes at the WTO to benefit its interests in the FTA.

Thirdly, if reduction or elimination of a customs duty on a particular good resulted in serious damages on the industry producing that good, the affected party, according to Article 8.1 of the FTA, may, as a safeguard measure, suspend further reduction and increase the customs duties. But, this safeguard measure must not exceed three years nor must it be applied more than once against the same good. The measure must be carried out to the extent necessary to prevent or remedy the injury (FTA, Article 8.2.4).

However, safeguard measures under the Agreement on Safeguards (AOS) of the WTO are more flexible than those of the FTA. The maximum duration of any safeguard measure, as per Article 7 of the AOS is four years, which can also be extended if it is found necessary to prevent or remedy serious injury and if evidence shows that the industry is adjusting to the application of the safeguard measure. However, the initial period of the application of the safeguard measure in addition to any extension cannot exceed eight years; i.e. five years longer than the FTA. Article 7.4 of the AOS conditions that any measure that lasts more than three years to be reviewed at mid-term and, *if appropriate, withdraw it or increase the pace of liberalization*. Moreover, Article 6 of the AOS provides even more flexible arrangements in *critical circumstances*, where delay would cause damage that would be difficult to repair. Under such circumstances, provisional safeguard measures can be applied but only in the form of tariff increases and must not exceed 200 days. However, the FTA, on the other hand, does not contain similar provisions

on such critical circumstances. Safeguard measures under the FTA can only be applied once on a particular good, but under Article 7.5 of the AOS, safeguard can be re-applied on the same good provided that a period equals to the duration of the original safeguard has elapsed and the period of non-application is at least two years (WTO, Agreement on Safeguard,1995f).

Furthermore, it is important to note that Article 8.1.b of the FTA conditions that any increase on the rate of customs duty undertaken as a safeguard measure on an affected good must not exceed *the lesser of; (i) the most favored-nation (MFN) applied rate of duty on the good in effect at the time the action is taken, and (ii) the MFN rate of duty on the good in effect on the day immediately preceding the date of entry into force of the Agreement.* When comparing this provision with the WTO, the latter is found more flexible for Oman. Oman, in actual practice, as a GCC member, has been adopting low tariffs of 5 percent on most products, which is much smaller than the bound levels for many products in Oman's schedule in the WTO (see tables 7.1 and 7.2 below). Hence, under the WTO, if a particular Omani product such as banana, for instance, was affected as a result of bananas imported from the U.S., Oman has the full right to increase, at any time, tariffs against U.S. bananas up to the bound level of 100 percent, as stated in its schedule. Not only that but Oman could even increase this tariff beyond 100 percent, as a safeguard measure, if it was proven that Omani bananas continued to be damaged by U.S. bananas.

However, these flexibilities are very substantially restricted in the FTA. Oman will not be able to automatically increase its tariffs against U.S. bananas as is the case under the WTO. This is because according to its FTA schedule of commitments, Oman is obliged to reduce its customs duty on bananas to zero percent within nine years (see table 5.1 below). The only choice for Oman is to increase tariffs as a safeguard measure, on the basis of chapter eight of the FTA. However, this increase, as per Article 8.1.b, must not exceed 5 percent as this percentage was implemented on the day *immediately preceding the date of entry into force of the Agreement* (January 1, 2009) (Article 8.1.b.i). Not only that, if the progressive level of reduction of tariffs on bananas, as per Oman's schedule to the FTA, was less than 5 percent, Oman would be able to increase tariffs, as a safeguard measure, only by lower than 5 percent as this would be the *applied rate of duty on* [banana] *in effect at the time the action is taken* (Article 8.1.b.ii).

On the other hand, however, Article 2.5.1 of the FTA obliges each party to allow temporary duty-free admission for certain goods, regardless of their origin; i.e. rules of origin do not apply to them. This exemption seems to be designed to serve the U.S. interests as the U.S. corporations

clearly enjoy more comparative advantages in these goods than Oman. These goods include professional equipment for the press and television, software, and broadcasting and cinematographic equipment that are justified as necessary for carrying out the business activity, trade, or profession of a person (Article 2.5.1.a). The same Article also entails goods that are imported for displaying or demonstration purposes, commercial samples and advertising films and recordings, and goods imported for sport purposes (Article 2.5.1.b,c,d). Hence, all U.S. products of these types can enter the Omani market freely regardless of their origin. The time limitation for the free entry of these temporary admitted goods can be extended beyond the period that was initially fixed (Article 2.5.2).

In addition, Article 2.6 of the FTA prevents any party from applying any tariffs to a good, irrespective of its origin, that re-enters its territory after the good has been exported from its territory to the territory of the other party for repair or alteration. Repair and alterations are defined in Article 2.6.3 to mean *restoration, renovation, cleaning, resterilizing, or other operation process that do not; (a) destroy good's essential characteristics or create a new or commercially different good; or (b) transform an unfinished good into a finished good.* The same prevention applies to a good imported temporarily from the territory of the other party for repair or alteration. Furthermore, Article 2.7 obliges both parties not to impose tariff on commercial samples of negligible value and on printed advertising materials imported from the territory of the other party regardless of their origin. But, Article 2.7 allows the parties to condition that; a) such samples to be imported solely for the solicitation of orders for goods or services provided from the territory of the other party or a non-party; or b) such advertising materials to be imported in packets that each contains no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment.

5.2.3. Oman's position: market access of agricultural goods

Under the WTO, Oman has managed to bind high custom imports duties on agricultural products. The majority of these products are bound at a rate of 15 percent (MOCI, 2001), which is far more than the actually applied 5 percent rate. Other sensitive products that are produced or grown locally such as eggs, dates, bananas, fruits, and milk are bound at even much higher rate (see table "5.1" below). The aim is to provide some protection for local products and farmers (MOCI, 2001). Other products such as pork meat and alcohol that are socially or religiously not acceptable in the Omani Muslim culture are bound at extremely high tariffs of 150-200 percent, thus making them as difficult as possible to enter the Omani market (Fulaifil, 2000). The implications of the bound rates under the WTO provide Oman with the flexibility of being able

to levy customs duties up to the level of the bound rates. Oman need not necessarily go up to those rates if it does not want to. But, Oman cannot levy duties at rates higher than the bound rates. Nevertheless, as is explained above, if it is deemed necessary for Oman, as if a product sector of its domestic industry suffers injury from imports, its currently bound duties under the MTS can be increased beyond the bound level under the Agreement on Safeguard. Not only that, Oman can also undertake protective actions under Article XVIII of the GATT, which allows developing countries to maintain flexibility in the tariff structure to protect their infant industries and apply quantitative restrictions on the balance of payments that would take into account their need for imports. Hence, Article XVIII allows removal of tariff concessions or imposition of quotas restrictions to establish an industry in a developing country (Raghavan, 1999, Breinlich, 2008). However, these especially flexible considerations do not exist under the FTA.

On the other hand, under the FTA, most of the above-mentioned bound tariffs will have to be eliminated to zero level immediately upon the entry into force of the Agreement. Oman will have to provide instant duty free access on virtually all products[2] with the exception of only a very few products, such as milk and cream, whose duties will be eliminated after four years[3], and others such as dates, lemons, bananas, pork, alcohol, and tobacco whose duties will be reduced to zero after nine years from the implementation of the FTA[4]. Hence, at the end of these periods, no longer can Oman provide protections for its local farmers nor can it be able to make religiously or socially unacceptable products difficult to enter Oman. Moreover, as is demonstrated in table (5.1) below, the FTA in respect of agricultural products clearly implies that Oman will lose substantial amount of its budget income that it fought strongly and managed successfully to maintain under the WTO. In return, the U.S. will eliminate duties on all items; most of them immediately upon entry into force of the Agreement, with the exceptions of few products after a transitional period of four to nine years.

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[2] These goods are listed in category A of Oman's schedule, on which duties shall be eliminated entirely and be duty-free on the same date the FTA enters into force (Annex 2-B, paragraph 1.a)

[3] These goods are listed in category B of Oman's schedule, on which duties shall be removed in five equal annual stages beginning on the date the FTA enters into force and these goods shall be duty-free, effective from January 1 of year five; i.e. the beginning of the fifth annual stage will witness complete elimination of duties on these goods (Annex 2-B, paragraph 1.b).

[4] These goods are listed in category C of Oman's schedule, on which duties shall be removed in ten equal annual stages beginning on the date the FTA enters into force, and these goods shall be duty-free, effective from January 1 of year ten; i.e. the beginning of the tenth annual stage will witness complete elimination of duties on these goods (Annex 2-B, paragraph 1.c).

Table (5.1): A comparison between Oman's tariff commitments in Agricultural products under the WTO and the U.S. FTA

Product	**WTO bound rate %**	**FTA final rate %**	**FTA implementation period**
Poultry	15 %	0 %	Immediate
Eggs	75% (in season) 20% (out of season)	0%	Immediate
Milk and cream	75%	0%	After 4 years
Dates	100%	0%	After 9 years
Bananas	100%	0%	After 9 years
Sensitive fruits (that Oman grows)	80% (in season) 30% (out of season)	0%	Immediate
Sensitive vegetables (that Oman grows)	80% (in season) 30% (out of season)	0%	Immediate
Pork meat and products	200%	0%	After 9 years
Alcoholic drinks	200%	0%	After 9 years
Tobacco and products	150%	0%	After 9 years
Other products	Generally 15% (a few lines at 20-30%)	0%	Immediate

Source: Oman-U.S. FTA, Chapter Two: Market Access; Ministry of Commerce and Industry (2001, 2006c).

5.2.4. Oman's position: non-agricultural market access (NAMA)

Similarly, under the WTO, Oman has managed to bind customs duties on a majority of industrial products at 15 percent, which is higher than the actual 5 percent rate that Oman had been applying before joining the WTO. Table (5.2) shows that in some important products such as fish and petroleum products, custom duties are even bound at a higher rate of 20 percent. In cases where the rates are equal to or lower than 5 percent, Oman managed to secure a transitional period of at least five years before implementation. Thus, domestic industries would get a reasonable transitional period of time to be prepared for competing with imported products. Zero duties on products of information technology are justified by the MOCI to be in the interests of Oman as the availability of such products at cheaper rates will benefit Oman in the long run. Likewise, low tariffs on chemical products are also thought to benefit Oman, as Oman, having a comparative advantage in petrochemicals, does not need protection of high duties, and on the other hand, Oman's exports of petrochemicals would get access to developed countries markets at low rates (MOCI, 2001). On the other hand, however, under the FTA, duties on all non-agricultural imports will be totally eliminated with the immediate implementation of the Agreement (table 5.2). Thus, with the immediate effect of the FTA, Oman will have to fully compete with the developed U.S. products; thus losing the above-mentioned flexibilities it has enjoyed under the WTO. Not only that, the Omani market may become dominated and monopolised by many U.S. products as they will be enjoying cheap entry to Oman with zero tariffs, which will be at the expense of products from other countries.

Table (5.2): A comparison between Oman's tariff commitments in non-agricultural products under the WTO and the U.S. FTA commitments

Product	WTO bound rate %	FTA final rate %	FTA implementation period
Fish	20%	0 %	Immediate
Oil	20%	0%	Immediate
Cement	15%	0%	Immediate
Pharmaceuticals	0%	0%	Immediate
Chemicals	0% - 5.5% - 6.5%	0%	Immediate
ITA	0%	0%	Immediate
Wood & products	8% - 10%	0%	Immediate
Agricultural equipment	5%	0%	Immediate
Construction equipment	5%	0%	Immediate
Medical equipment	5%	0%	Immediate
Civil Aircraft	0%	0%	Immediate
Paper	5%	0%	Immediate
Toys	15%	0%	Immediate
Other products	Generally 15 %	0%	Immediate

Source: Oman-U.S. FTA, Chapter Two: Market Access; Ministry of Commerce and Industry (2001, 2006c).

5.2.5 Will the U.S. FTA benefit Oman's exports?

In a report published by the Ministry of Commerce and Industry (2006c), it is optimistically stated that allowing full liberalisation of goods under the FTA *would result in increased Omani exports to the U.S. and would also encourage the U.S. and other countries' companies to invest in Oman in order to produce and export goods to the vast U.S. market, taking advantage of the duty-free preferential access*. However, this soundly ambitious statement is still un-testified and there are some important factors that may obstruct its achievement.

Firstly, with the increasing number of the U.S. FTAs with different countries around the world; a phenomenon that could continue in the future depending on the trade policy of the new U.S. Administration, Oman is not unique. Foreign investors who might target the U.S. market already have different FTAs' choices. They do not necessarily need to invest in Oman to get free access to the U.S. market. Bahrain, Morocco, Jordan, and Israel are already parties of the U.S. FTAs, a new one with the UAE may be coming along and many others could enter the game depending on the future success of the MEFTA project. Secondly, the MOCI statement clearly contradicts Oman's position in the WTO, where the negotiating team fought to protect nationally produced products by insisting on binding high tariffs. Thirdly, the statement that full liberalisation of goods would result in increasing Omani exports to the U.S. has no supportive evidence. The problem does not lie much in entering the U.S. market, but in Oman's ability to establish strong industries capable of producing goods that can effectively compete in the open U.S. market.

Fourthly, more specifically, this statement does not have any supporting evidence in relation to agricultural products. U.S. domestic agricultural products are heavily subsidised to enable them

maintain their competitiveness in the U.S. market as well as international markets. But, when Oman negotiated its membership to the WTO, it put it very clearly that its agricultural products were not given any export subsidies as Oman was not an agricultural exporting country and the Government support was only restricted domestically (WTO, Report of the Working Party on the Accession of the Sultanate of Oman to the WTO, 2000a). Hence, any future subsidies that might be given to the Omani agricultural products for exports purposes would merely contradict Oman's commitments at the WTO. This ultimately means that the full liberalisation of agricultural goods under the FTA will not help Oman increase its exports of these goods to the U.S., as Oman's ability to promote this sector for exporting purposes is already restricted. This disadvantageous position is opposite to the U.S. agricultural products which enjoy strong support from the U.S. Government.

Fifthly, Oman's position of not providing subsidies for agricultural products for exporting purposes is further cemented under the FTA which prohibits both Oman and the U.S. – as is stated in Article 2.11 – from maintaining or introducing an export subsidy on agricultural goods destined to the other party. Thus, Oman's inability to develop an agriculture sector for exporting purposes is further locked in by the U.S. FTA. It is worth mentioning that Article 2.11.1 of the FTA also states that both parties *share the objective of the multilateral elimination of export subsidies for agricultural goods and shall work together toward an agreement in the WTO to eliminate those subsidies and prevent their reintroduction in any form.* This emphasis on the multilateral elimination of export subsidies in the FTA might give the impression that the U.S. strongly believes in the full liberalisation of the agriculture sector, which is also the demand of many developing countries at the WTO and is one of the contentious issues at the MTS level. However, such an impression can be inadequate because the FTA only mentions the elimination of "export subsidies" for agricultural goods and does not make any reference to the elimination of other types of protection measures, such as the domestic subsidies and different forms of market access restrictions that have been practised by the U.S. for a long time to help protecting its domestic farmers. These kinds of protective measures are what have created the biggest obstacle against any further progress in the Doha Development Agenda, and resulted in the failure of Cancun Ministerial, and the modest success of Hong Kong Ministerial.

5.2.6. Policy implications

In light of the above, the FTA does not provide Oman's agricultural and no-agricultural products with any better arrangements than the WTO. On the contrary, Oman's trade is better served by the WTO whose legal texts contains more flexible arrangements in regard to market access and

safeguard measures than the FTA. Also, under the WTO, Oman managed to address its national economic and social interests and maintain highly bound tariffs on sensitive products. But, these achievements are lost under the FTA. Furthermore, unlike the FTA where Oman's market access commitments are locked in, negotiations at the MTS level on this issue are still continuing, where many proposals have been put forward by different countries to improve the multilateral regulations and further consider the interests of developing countries. Hence, despite being a late comer to the MTS, Oman still has the opportunity to address its agricultural and non-agricultural concerns and participate in these negotiations by building coalitions with other developing countries of similar interests. Ministers at the Doha MC emphasised the importance of taking into account the special needs and concerns of developing countries, including food security and rural development (WTO, Doha Ministerial Declaration, 2001). This emphasis goes a long with Oman's interests both as a developing and as a food importing country, and thus Oman should seek to promote these issues. Hong Kong Ministerial Declaration (2005b) has put even more emphasis on the interests of developing countries in both agricultural and non-agricultural negotiations. However, such opportunities do not exist in the FTA.

> We recognize that it is important to advance the development objectives of this Round through enhanced market access for developing countries in both Agriculture and NAMA. To that end, we instruct our negotiators to ensure that there is a comparably high level of ambition in market access for Agriculture and NAMA. This ambition is to be achieved in a balanced and proportionate manner consistent with the principle of special and differential treatment (WTO, Hong Kong Ministerial Declaration, 2005b).

Paradoxically, U.S. exports to Oman could increase as a result of the implementation of the FTA and the full liberalisation of the Omani market. The leading U.S. exports to Oman in 2004 were concentrated in machinery, transportation equipment, and measuring instruments, including parts of boring or sinking machinery, heat exchange units, passenger vehicles, and others. The U.S. International Trade Commission (2006, p.2-13) estimates that the magnitude of U.S. exports of these types of goods will increase, due to the elimination of the 5 percent tariffs that Oman imposes on U.S. exports and the continuation of industrialisation and privatisation process in Oman. Hence, the U.S. companies have big investment opportunities in different sectors in Oman.

> The emphasis of the Government of Oman on industrialization and privatization as outlined in the Oman Vision 2020 plan may provide greater opportunities for U.S. exports of machinery and transportation equipment, which would likely be enhanced by the duty eliminations under the FTA. Anticipated airport, port, and telecommunication infrastructure expansions, additions to power generation capacity and wastewater management improvements will require significant capital investment. The Government of Oman is also interested in providing its growing population with improved health care. Based on these expected developments, U.S. exports of transportation, medical, power, water and recycling, and telecommunications machinery and equipment appear to have good growth prospects. Although Oman is interested in reducing its economic reliance on the oil sector and diversifying its economy, continued investment in the oil and gas industry, coupled with the elimination of tariffs on machinery and

equipment under the U.S.-Oman FTA, may also spur greater demand for U.S. exports of associated machinery and equipment (Ali, 2005).

5.3. Rules of origin

Rules of origin (ROO) relate to the criteria used by customs authorities to identify where a product is made (Daz, 1999). However, such identification is not easy in the current era of globalisation where one product can be processed in different countries before it enters the destined market (WTO, Rules of Origin, 2007c). ROO are essential when there is a desire to discriminate between sources of supply; as is the case in preferential trade agreements; i.e. to determine whether imported products should receive most-favoured nation (MFN) or preferential treatment (Hoekman and Koestcki, 2001). Hence, there are two types of ROO; non-preferential and preferential. Non-preferential ROO are used when all imported products are treated equally on the MFN basis; i.e. the same ROO are applicable to all imports from different countries. Non-preferential ROO are used to discriminate domestic products from imported products. Hence, domestic products are given protective favourable treatment against imports. This is clearly the case in government procurement where countries seek to exclude foreign products or condition that certain transactions are specifically granted to domestic products, with the aim of promoting national industries.

On the other hand, preferential ROO are practised when a country grants a trading partner with favourable treatment that is not granted to other countries, as is the case of the Oman-U.S. FTA and the GCC customs union. Hence, specific foreign products of the preferential party are provided with equal treatment with domestic products, but this favourable treatment is not extended to imports from other counties (Australian Customs Service, 2006). Thus, under preferential ROO, certain products benefit from duty-free or duty reduced entry into the territories of the parties of the agreement provided that they originate from the parties. As a result, preferential ROO entail conditions and criteria via which a party can determine whether or not, specific products originate in the other party (Hilal, 2001a; Jones, 2008). This section analyses Oman's commitments in relation to both non-preferential and preferential ROO under the WTO and the Oman-U.S. FTA respectively. The study finds out that WTO arrangements are more flexible and provides Oman with better opportunities to address its interests and concerns than is the case under the FTA.

5.3.1. Rules of origin under the WTO

5.3.1.1. The harmonisation work programme (HWP): non-preferential ROO

Originally, GATT 1947 had no specific ROO of goods in international trade (Landau, 2005). Each contracting party was free to determine its own ROO and could even maintain several different ROO. This has created an extremely difficult situation in the flow of international trade as ROO were used as protective shield against free trade and necessitated finding ways of harmonisation of ROO for all WTO members into one set of rules (WTO, 2007c)[5]. Such harmonisation has become the ultimate objective of the multilateral Agreement on Rules of Origin (ARO), which was part of the outcomes of the Uruguay Round. The ARO acts as a provisional guiding agreement for comprehensive multilateral negotiations on ROO. Article 1.1 of the ARO defines the ROO as *those laws, regulations, and administrative determinations of general application applied by any Member to determine the country of origin of goods*. Article 1.2 further clarifies that the ARO covers non-preferential ROO such as MFN treatment, anti-dumping and countervailing duties safeguard measures, origin marking requirements, any discriminatory quantitative restrictions or tariff quotas, as well as those used for trade statistics and government procurement (WTO, Agreement on Rules of Origin, 1995m). Hence, preferential ROO such as those included in the Oman-U.S. FTA or those related to generalised system of preferences (GSP) schemes are not subject to the multilateral ARO (Harilal and Beena, 2003).

Thus, in order to make ROO simpler, homogeneous, and constant and to avoid misusing them as protective measures, the ARO has established a harmonisation work programme (HWP). Through this programme, ROO of different WTO members are hoped to be brought together into an understandable and objective single set of international rules (WTO, 2007c). By adopting a multilaterally unified and predictable ROO for non-preferential trade, *the possibility for a single country to draw up rules in politically motivated ways* would be limited (International Trade Centre, 2007, p.3). The HWP was due to end in July 1998, but several deadlines have been missed due to the complexity of the issue and disagreement between developing and developed countries (Hilal, 2001a; Inama, 2001). Developing countries feel that the U.S. and the EU

[5] It is worth noting that the only multilateral convention dealing with rules of origin before the establishment of the WTO was the 1974 International Convention on the Simplification and Harmonization of Customs Procedures (known as the Kyoto Convention, which was negotiated under the auspices of and administered by what is now known as the World Customs Organisation in Brussels). The convention provides a short list of products that should be considered to originate in a country because they are wholly produced or obtained there. These are largely natural resource-based products extracted or obtained from the territory of the country concerned. Where two or more countries are involved in the production of a product, the convention states that the origin of the product is the one in which the last substantial transformation takes place (Hoekman and Kostecki, 2001, pp.165-166; see also International Trade Centre, 2007).

complicate their ROO, particularly in agriculture and textiles and clothing, so that they can restrict imports from developing countries and protect their domestic industries (Harilal and Beena, 2003). Once ready, the harmonised rules will be adopted at a Ministerial Conference (Daz, 1999).

The HWP has been conducted by two committees; the Committee on Rules of Origin (the Committee), and the Technical Committee on Rules of Origin (Technical Committee - TC). The Committee is composed of representatives from each WTO member and it elects its own Chairman. The Committee shall meet as necessary, but not less than once a year and it can request information, advice, or other work from the TC on matters related to the ARO and that can help the Committee achieve its objectives (Article 4.1).

The TC was established under the auspices of the Customs Co-operation Council (CCC) and has been working in conjunction with the World Customs Organisation (WCO) to develop a classification system regarding the changes in tariff subheadings based on the harmonised system (Harilal and Beena, 2003). The CCC Secretariat acts as the secretariat to the TC (Article 4.2). The TC carries out the technical work that is prescribed specifically in Annex I of the ARO, which includes; examining specific technical problems that may arise in the day-to-day administration of the non-preferential ROO of members and to advise about the suitable solutions. This examination can be carried out upon the request of any member to the TC. The TC supplies the Committee or any other member with information and advice concerning the origin determination of goods. The TC is also tasked with preparing and circulating periodic reports on the technical aspects of the operation and status of the ARO (Paragraph 1.c, Annex I). The TC can request information, advice, or other work from the Committee on matters related to the ARO. Each member is entitled to be represented on the TC and may nominate *one delegate and one or more alternates to be its representatives on the Technical Committee* (Paragraph 4, Annex I). As is the case with the Committee, the TC can hold meetings when necessary, but not less than once a year (Paragraph 8, Annex 1).

5.3.1.2. Multilateral disciplines in the transition period of the ARO

According to Article 2 of the ARO, members will continue implementing their own ROO trade during the transitional period; i.e. until the completion of the HWP. Each member is required, as per Article 5.1, to provide the Secretariat, within 90 days after the WTO Agreement becomes applicable to it, with its ROO and any other judicial decisions and administrative rulings relating

to ROO in effect of that date. If the member unintentionally has not provided the Secretariat with its ROO within this period, it shall provide them to the Secretariat as soon as it realises this fact.[6]

These temporary arrangements of the ARO have proven to be quite flexible for Oman. Since its accession to the WTO in November 2000, Oman has not incorporated specific domestic ROO for non-preferential trade. According to paragraphs 65-68 of the report of the working party on the accession of Oman to the WTO (WTO, 2000a), Oman clarified that it had no ROO for non-preferential trade, but substantiation of origin was necessary for preferential trade concerning imports from GCC and the Arab League Free Trade Area (ALFTA)[7]. Under these two preferential arrangements origin was conferred on goods containing at least 40 percent valued added. Thus, an issuance of a certificate of origin was regarded as a proof of origin by the Government of Oman.

Oman further notified WTO members that it issued the Ministerial Decision (MD) number 21/2000 to be in line with the requirements of the ARO and to be applicable to both preferential and non-preferential trade. The MD gives exporters and importers the right to apply to the General Directorate of Trade in the MOCI to evaluate the origin of their products and thus, provide them with a certificate on that. Article 1 of the MD conditions that requests for such an evaluation must contain thorough and precise details about the product concerned, particularly the different basic parts from which the product is made and the countries in which each of these parts are made and their values. Article 2 of the MD obliges the Directorate General of Trade to issue a certificate on its assessment of the origin of the product within 150 days from the date of receiving the application. However, the MD does not stipulate how this assessment is carried out. The certificate shall be valid for three years starting from the date of its issuance (Article 3 of the MD).[8]

However, the MD 21/2000 only acts as a guiding document that authorises exporters and importers to apply for a certificate on the origin of their goods and obliges the General Directorate of Trade to respond to their applications. But, the MD does not stipulate the criteria and conditions on which the origin of a good is determined. Therefore, WTO members requested Oman during its negotiations on accession to the WTO to adopt its own domestic ROO for non-

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[6] According to Alice Landua (2005), ninety countries have notified their rules of origin to the WTO Secretariat.
[7] ALFTA is now known as the Greater Arab Free Trade Area (GAFTA).
[8] These provisions match the requirements of Article 2.h of the ARO, as is elaborated below.

preferential trade. Oman promised to meet this request upon its accession to the WTO.[9] However, such a promise was never fulfilled as Oman, according to its trade policy review report (WTO, 2008e), continued not to have specific domestic ROO for non-preferential trade.

In addition to being able to refrain from adopting specific domestic ROO for non-preferential trade, Oman still has the opportunity to participate in the negotiations on the HWP and make sure that its interests of promoting its national industries are addressed in the final agreement on non-preferential ROO. Once adopted, this agreement will also be applicable to Oman.

However, the flexibility of allowing members to establish their own non-preferential ROO until the HWP is completed is subject to certain disciplines that are set out in Article 2 of the ARO according to which each member must clearly define the type of criteria it uses to determine the origin of a product. Article 2.a of the ARO defines three types of criteria and each of them contains certain disciplines that must be followed by members. Some members adopt one criterion only while others adopt more than one (Daz, 1999). The first criterion is known as a "change in tariff classification" of the product which involves finding out whether the manufacturing or processing carried out in a particular country has changed the tariff classification of the product. When using this criterion by any member, its rules must specify the headings or subheadings which will determine the origin (Article2.a.i). For example, if Oman was involved in the production of home furniture that was made out of wood materials, changes in the classification of the products from wood to different types of furniture would have taken place. Thus, Oman would be the country of origin of the furniture products as the production process has been conducted in Oman.

The second criterion is the use of percentage of value addition; technically known as the *ad valorem* criterion, which is based on whether a certain minimum percentage of value addition is achieved in a particular country, which is then regarded as the country of origin (Daz, 1999). Hence, when woods are converted into furniture, in our example above, there is a value addition which is generally calculated on the basis of the difference between the price of the new product, i.e. the furniture and the price of the earlier product, i.e. the woods. The differences between the two prices are the value addition in converting woods into furniture. Thus, the ARO obliges

[9] This promise is stipulated in paragraph 67 of the report of the working party on the accession of Oman to the WTO (2000a, p13). which states that:

> The representative of Oman stated that the Government Regulation establishing Oman's rules of origin would be adopted no later than by the date of accession. He confirmed that from the date of accession Oman's rules of origin would comply fully with the WTO Agreement on Rules of Origin. The Working Party took note of this commitment.

members that adopt this criterion to specify the required percentage of the value addition of the product and indicate the method of calculating the percentage (ARO, Article 2.a.ii).

The third criterion is the occurrence of specified processing operations of a product in the originating country. The chain of activities in manufacturing and processing has several important operations. In this criterion the particular operation in the chain will determine the origin of a product (ARO, Article 2.a.iii). Hence, any WTO member that adopts this criterion must specify the particular manufacturing or processing operation that determines the origin of the product. For example, in the case of the furniture, Oman may lay down that the operation of joining and fixing the different parts of each piece of the furniture would be the criterion, and not only cutting the wood into different sizes or putting a particular coating over it.

The rest of Article 2 of the ARO outlines different conditions that prohibit members from exploiting their ROO during the transition period and using them as protective measures to restrict imports from other members (Article 2.b). Also, the rules themselves must not result into restrictive, distorting or disruptive effects on international trade (Article 2.c), nor must they be more rigorous than those applied by the member to determine whether a product is of domestic origin (Article 2.d). In addition, the current ROO implemented by members during the transition period must be based on positive standards; which include criteria of a member's eligibility for being treated as the country of origin, and not criteria of ineligibility (Article 2.f). Article 2.e obliges members that their ROO are administered in a consistent, uniform, impartial, and reasonable manner. Laws and regulations that relate to the ROO must be published in a manner that enables other governments and traders to become acquainted with them (Article 2.g).

When a request is made to a member about the assessment of origin it would accord to a particular good, the member concerned is obliged to respond as soon as possible and no later than 150 days of the request. The assessment shall remain valid for three years (Article 2.h)[10]. Article 2.k requires that information which is of a confidential nature must be treated confidentially. If any member adopts or changes its ROO during the transition period, it is obliged to publish a notice about the new changes at least 60 days before the entry into force of the new rules or the modifications. But, if exceptional circumstances arise or even threaten to arise for a member, the member need not give prior notice and shall publish the modified or the new rules as soon as possible (Article 5). This further demonstrates the flexibility of the MTS,

[10] As is mentioned above, Oman's MD 21/2000 incorporates the requirements of Article 2.h.

which does not exit in the FTA. Article 3 of the ARO stipulates disciplines that will be applicable when the harmonised ROO are put into force. These disciplines are mostly identical with those of Article 2 that are applicable during the transition period.

5.3.1.3. Latest developments

As is mentioned above, work on the harmonisation programme is still continuing due to the complexity of the issue, complicated differences between ROO of members, and the continuous disagreement between developed and developing countries (Hilal, 2001a). The working party of the programme has to make a thorough review on the products, chapter by chapter and sub-position by sub-position. According to Alice Landau (2005, p.100), the Committee has reached an agreement on 1,730 sub-positions out of the 5,130 that constitute the harmonised system. Some of the products that still have not been agreed about are sensitive for both developing and developed countries particularly textiles and agricultural products (Landau, 2005). Also, there have been negotiating difficulties in regard to the definitions of *minimal operations and processes* that are used in the chains of productions but do not by themselves confer origin such as bleaching, blending, assembly, disassembly, sewing and cutting, colouring, packing and packaging. The challenge is how these processes could be classified and ordered in line of the method of "substantial transformation" (International Trade Centre, 2007).

Paragraph 9 of the Doha Ministerial Declaration urged the Committee to complete its work by the end of 2001; a deadline that was missed and has continued to be missed until the present time. The Declaration emphasised that any arrangements on ROO implemented by members before the entry into force of the results of the HWP shall be consistent with the ARO and must be examined by the Committee (WTO, 2001). Ministers at Hong Kong MC further urged members to take additional measures to *provide effective market access, both at the border and otherwise, including simplified and transparent rules of origin so as to facilitate exports from LDCs* [least developing countries] (WTO, 2005b).

In light of the above, despite being a latecomer to the WTO, Oman can still participate in the making of the final set of multilateral ROO. Oman has the right to be represented in the Committee and the TC. Oman can unite its voice with other developing countries of similar interests, so that they can have more influence on the finalisation of the HWP. Furthermore, Oman can seek technical assistance from the TC.[11] If Oman comes across a technical problem with another member concerning the latter's administration of ROO, Oman can ask the TC to

[11] In fact, Oman has already sought in its Trade Review Report to receive assistance on ROO from the WTO (WTO, 2008e, p.21).

examine the issue and suggest suitable solutions. However, all these policy choices are absent under the FTA where Oman must abide by the complex and the very detailed U.S. designed ROO that Oman lacks experience of and never participated in drafting them. But, what do the ROO of the FTA look like? What are the main criteria and conditions that must be met for a good to be considered as an originating good? The following paragraphs discuss the answers to these questions.

5.3.2. Rules of origin under the Oman-U.S. FTA

5.3.2.1. Definition and measurement of an originating good

Chapter four of the FTA outlines provisions for non-textiles[12] to be considered as originating goods. Firstly, an originating good must be directly imported from the territory of one party to another. Secondly, the good must be wholly grown, produced or manufactured in one or both of the parties (Article 4.1.a). These two conditions are further explained by Article 4.9 which conditions that a good shall not be regarded to be imported directly from one party if the good is produced, manufactured or undergoes other operation outside the territories of that party. Thirdly, an originating good can be regarded as a new or different article of commerce if it fulfills the above two conditions and that the total value of materials produced *in the territory of one or both of the parties*, plus the sum of the *direct costs of processing operations performed in the territory of one or both of the parties is not less than 35 percent of the appraised value of the good at the time it is imported into the territory of a Party* (Article 4.1.b). Hence, for an originating good to be regarded as a new or different article of commerce, its nature must be *substantially transformed* (Article 4.2). If the good has only undergone *through simple combining or packaging operations or mere dilution with water or with another substance*, it will not be qualified as an originating new or different good, as such processes are not enough to change the characteristics of the good (Article 4.3). The formula used to calculate the 35 percent of value addition is;

$$\frac{\text{VOM (Value of a material)} + \text{DCP (Direct cost of processing operations)}}{\text{AV (Appraised value of the good)}} \times 100$$

According to Article 4.5, the "value of materials" includes; 1) the actual price of the good, 2) transportation costs of the materials to the producer's plant, 3) the cost of waste or spoilage, 4) taxes or customs duties imposed on the material by one or both of the parties provided they are

[12] Rules of origin for textiles are separately dealt with in chapter three of the FTA, which is covered in the analysis of the next chapter of this thesis. Thus, the terms "good" or "goods" mentioned in this section refer to non-textiles goods.

not remitted upon exportation. "Direct costs"[13] refer to costs that are directly related to the production or manufacture of the good such as; 1) labour costs, 2) costs of machineries and their depreciations, 3) costs of research, development, design, and engineering, 4) costs of inspecting and testing the specific goods, 5) and costs of packaging the specific good for export to the territory of the other party (Article 4.6).

It is important to note that the FTA provides that any originated good or material produced in the territory of one of the parties and then incorporated and used in the production of a good by the other party, shall also be considered as an originated good of the latter party. This process is called "cumulation" (Article 4.4). For example, if Oman imports raw materials, such as woods, from the U.S. and uses them to produce furniture to be exported back to the U.S., these woods will be regarded as Omani originated materials and the value of woods can be used in the calculation of satisfying the 35 percent value addition. Furthermore, Article 14.13 allows the two parties, within six months of the date of entry into force of the FTA, to consider developing *to the extent practicable*, regional accumulation regime covering the U.S. and Middle Eastern countries that have FTAs with the U.S. If this development took place, it would imply that goods originated in Morocco, Jordan, Israel, and Bahrain could be regarded as Omani originating good. In other words, Article 4.13 allows both Oman and the U.S. to expand their cumulation to entail other Middle Eastern countries that have FTAs with the U.S., which is the ultimate objective of the MEFTA project. However, this would depend much on the mutual agreement of the two parties and the future success of the MEFTA.

5.3.2.2. Importation, consultations, and modifications

Article 4.10 outlines requirements that an importer must meet in order to be able to claim for preferential tariff treatment (PTT) on the basis of the FTA. Firstly, the importer must provide a certificate that the imported goods qualify for PTT. Secondly, the importer must provide the customs authorities of the importing party, upon request, a declaration including important information related to the growth, production, or manufacture of the good. On the other hand, each party is obliged to grant any claim for PTT, unless there are information to indicate that the importer's claim fails to comply with any requirement under chapters four and three (textiles and apparel) of the FTA (Article 4.11.1). The importing party has the right to verify the origin of a good to determine whether or not, it qualifies for PTT (Article 4.11.2). If any party denies a

[13] Any other costs that are not listed as direct costs are called "indirect costs" such as profit and general expenses of conducting business that are not *allocable to the specific good or not related to the growth, production or manufacture of the good, such as administrative salaries, casualty, liability insurance, advertising, and salesmen's salaries, commissions, or expenses* (Article 4.6.2.b).

claim for PTT, it must justify its denial legally in writing within a period established under its law (Article 4.11.3).

More importantly, Article 4.11.4[14] conditions that if an importer did not make a claim for PTT at the time of importation, the importer still, within no more than one year after the date of importation, has the right to make such a claim and apply for a refund of any excess duties paid. Such a claim must be made through a written declaration that the good was originating at the time of importation along with other documentation and information relating to the importation of the good as the importing party may require. These conditions may have some important implications for customs authorities in Oman. Rather than deciding instantaneously whether imports would qualify for PTT at the time of their entry, customs authorities in Oman would have to deal with claims for refund on imports that had already entered the country some time ago and perhaps had been consumed and sold out. It is important to note that these conditions of Article 4.11.4 are not incorporated in any other FTA under the MEFTA project. This means that Oman is the only MEFTA country that is obliged to meet these additional conditions. Although Jordan, Bahrain, and Morocco are free to establish their own rules and mechanism of how to respond to claims for refunds of excess duties paid to their customs authorities, Oman must meet the obligations set out in Article 4.11.4. In addition, according to Article 4.12, both parties are required to consult and cooperate with each other to ensure the implementation of the rules of chapter four. They may establish working groups or a subcommittee of the Joint Committee to consider any matter related to the provisions of the chapter.

5.3.3. Policy implications

The analysis of this section has demonstrated that the WTO arrangements in regard to ROO are more flexible and provide Oman with better policy choices than the FTA. Under the WTO, Oman has been able to refrain from establishing domestic ROO for non-preferential trade. As the work on the HWO has been continuing, Oman still has the opportunity to participate in the continuing multilateral negotiations and make its interests as a small developing country seeking to promote its national industries well-addressed. Once the HWO is finalised, Oman will be obliged, like any other member state, to abide by the new non-preferential ROO. Oman will apply the same ROO to all countries without any discrimination, except those countries with

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[14] Article 4.11.4 states that:

> Each Party shall provide that, where an originating good was imported into its territory but the importer of the good did not make a claim for preferential tariff treatment at the time of importation, that importer may, no later than one year after the date of importation, make a claim for preferential tariff treatment and apply for a refund of any excess duties paid as the result of the good not having been accorded preferential tariff treatment...

whom Oman has preferential agreements such as the FTA, GCC, and GAFTA. Oman can also seek the help of the Committee and the TC to understand and examine other members' ROO.

However, all of these opportunities do not exist in the FTA. Rather, the FTA has made matters very complex for Oman as it has meant that Oman's trading activities will have to function under different complicated ROO based on discrimination that are specifically applied to the U.S. goods. Even within the FTA itself there are separate ROO for textiles and apparel goods, which further complicate the situation for Oman. Thus, customs authorities in Oman will have to adapt and prepare themselves to function under different complicated and contradictory arrangements of ROO. The first are the special ROO in the FTA for textiles and non-textiles goods as stipulated in chapters three and four. The second are ROO for goods coming from the GCC countries. The third are ROO for goods coming from GAFTA members. The fourth will be the new multilateral ROO after the finalisation of the HWP. The situation will become even more complicated when Oman enters into more FTAs with other countries under the umbrella of the Gulf Cooperation Council, such as the GCC-EU FTA. Oman will thus, have to implement other different types of ROO.

In an attempt to paint a good picture about the FTA, the MOCI (2006c) predicts that ROO in the U.S. FTA will work for the benefit of Oman, as well as the U.S., as both parties' originating goods will entertain the benefit of zero tariffs. The MOCI also argues that the FTA provisions on "cumulation" and "regional cumulation" will work for the benefit of Oman because Omani industries can utilise inputs from the U.S. and MEFTA countries as Omani originating goods (MOCI, 2006c). However, these ambitious statements may not be necessarily achieved due to the following reasons. Firstly, apart from the limited oil and gas production capacity, Oman lacks the manufacturing capacity to produce industrial goods that can be substantially transformed to satisfy the required criteria of the FTA in order to be regarded as Omani originating goods. Secondly, the high transport costs of importing materials from the very remote U.S. market, processing their production in Oman, and exporting them back to the U.S., could downgrade the expected benefits from the "cumulation" provisions. Thirdly, geographical proximity could make "regional cumulation" more promising for Omani industries than "cumulation" with the U.S. However, "regional cumulation" is not an automatic process that could become applicable as a result of the implementation of the Oman-U.S. FTA. But, the issue would depend much on the future success of the MEFTA project. The more MEFTA candidates sign FTAs with the U.S. the bigger the chance for Oman to import raw materials from these countries and process them in Omani factories. But, the future success of the MEFTA is not very promising as the U.S.

Administration has only managed to sign three FTAs since the initiation of the MEFTA in 2003. Thus, the future of the MEFTA would depend much on the trade policy of the new U.S. President, Barack Obama and the extent to which the Congress would be ready to provide him with the TPA.

5.4. Dispute settlement

5.4.1. Background on the development of the multilateral dispute settlement system

Under GATT 1947, the procedure for settling disputes had no fixed timetables and many cases took a very long time. Rulings were easier to block as the dispute settlement process (DSP) was based on "positive consensus" where a single objection could block the rulings. The approval of both parties to a dispute had to be secured either on the initiation of a penal or the adoption of its final report. This created one of the biggest shortfalls of the system as parties could easily block either the commencement or the completion of the dispute process (Hilal, 2001b). However, despite this serious weakness, the system functioned quite well as of around 278 complains between 1948 and 1994, 110 resulted in legal rulings by panels and the majority of these rulings were adopted. The others were settled before a report was produced. Hoekman and Kostecki (2001, p.75) attribute this success to the *self-interests* of the parties. If losing parties sought to block the cases, they would be similarly treated in other cases at which they could be the winners. Thus, every party was careful not to resort to blockage.

Nonetheless, this weakness remained one of the biggest concerns to many contracting parties, particularly developing countries. These problems were addressed and overcome in the Uruguay Round as a result of which a more structured rule-oriented system of dispute settlement with more clearly defined stages in the procedure was introduced (WTO, Understanding the WTO, 2007q, p.55). The system is regarded as one of the positive achievements in the history of the MTS (Jackson, 1999). The possibility of blocking the initiation of a panel or the adoption of a panel's report can no longer take place (Hudec, 1999, 2000). This is because the new dispute system has removed the "positive consensus" requirement of the old GATT and is now driven by the so-called "negative consensus" at key stages of the process. This means that all the WTO members must agree not to adopt a panel report or Appellate Body recommendations or rulings; a probability that is impossible to take place as the wining member will not vote against itself. The removal of the blocking option is replaced by the creation of a new separate standing Appellate Body, to which losing members can resort if they feel unsatisfied with the panel's rulings. WTO members have agreed that if they believe that other members are violating trade rules, they will not seek unilateral actions but to use the multilateral DSP (WTO, 2007q). Such

an effective dispute system is particularly important for small members such as Oman, which cannot enforce agreements themselves and may find it very difficult to stand against any trade actions conducted unilaterally by large traders, which could take place if there was no multilateral DSP in place (Hoekman and Kostecki, 2001).

Hence, the main purpose of the DSP, as stated in Article 3.2 of the "understanding on rules and procedures governing the settlement of disputes" (DSU), is to provide security and predictability of the multilateral trading system and to preserve members' rights and obligations. Article 3.7 further clarifies that the DSP aims to ensure that a positive solution to a dispute is in place, which can be reached through certain successive steps; consultation, panel, Appellate Body, compensation, and suspension of the application of concession or other obligation under the covered agreements.[15] The DSP also aims to elucidate the provisions of the WTO agreements, without any addition to or diminishment of the rights and obligations provided in these agreements.

Settling disputes between members is the task of the Dispute Settlement Body (DSB), which consists of all WTO members. Hence, Oman shares the DSB's authority to establish "panels" of experts to consider the case, and to accept or reject the panels' findings or the results of an appeal. The DSB also monitors the implementation of the rulings and recommendations, and has the power to authorise retaliation when a country does not comply with a ruling. Such an authoritative and monitoring body finds no equivalent in the FTA (WTO, Dispute settlement, 2008g). Only the governments have the legal standing to bring cases to the WTO. Private sectors are not allowed to do so. If a particular business of one party suffers from actions or measures taken by another party, the affected business cannot directly take its complaint to the WTO. It must first convince its government about the validity of its case as the government would be the one which takes the case to the dispute (WTO, 2008g). The same applies to the dispute settlement procedures of chapter twenty of the FTA but there exist other special dispute settlement procedures under chapter ten of the FTA on investment, where private investors can be a direct party to a dispute against the government of the other party.[16]

However, it is important to note that the current DSU is not a perfect system and can still be improved further. Some scholars argue that the DSU has become *too rigid* and *too "judicialized"*,

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[15] Explanations on each of these steps are provided in the comparative analysis below which demonstrates that DSU's provisions on these steps are substantially more transparent and flexible than those of chapter twenty of the FTA.

[16] The analysis of this special dispute settlement procedure will be provided in the next chapter of this thesis.

which do not match the spirit of the good-will of WTO members (WTO, World Report 2007, 2008d, p.278). Thus, the more rigid and institutionalised the DSP becomes, the greater the chance for members to deviate from the WTO and seek other mechanism of dispute settlement (Klein, 1996; Guzman, 2002; Charnovitz, 2002). Other scholars also raise concerns about the possible biasness of the DSU against developing countries as they do not have enough power to retaliate against powerful economies (Anderson, 2002; Mavroids, 2000; Pauwelyn, 2000; WTO, 2008d).

However, these concerns are consistently addressed and negotiated in the current Doha Round and many proposals have been put forward about them. But, by no means should such views discredit the multilateral DSP as an effective system that has managed to administer and settle dispute between WTO members. The DSP, along with its institutional and rigidity aspects, has been very successful in settling disputes and enforcing the WTO agreements as evidenced in the increasing number of countries, developed and developing, that have been using the system (Jackson, 2005; Davey, 2005).[17] The study now turns to thoroughly analyse the provisions of the multilateral DSU in comparison with chapter twenty of the FTA. The analysis clearly finds out that the DSU provisions are more comprehensible, comprehensive, and more considerate for Oman than chapter twenty of the FTA. Oman has better policy choices under the DSU than the FTA.

5.4.2. Comparative analysis on the dispute settlement between the WTO and the FTA

5.4.2.1. Scope of application

Article XXIII.1 of the GATT stipulates that any member can resort to the DSP if it considers that any benefit accruing to it is *being nullified or impaired* <u>*or*</u> that the achievement of any objective of the covered agreement is being impeded, <u>*as the result of*</u> the failure of another party to implement its obligations, or its application of any measure, whether or not it conflicts with the provisions of the agreement. Hence, Article XXIII.1 conditions that nullification or impairment of benefits suffered by the complaining party are the "consequences" of the "causes" of the failure of the member complained against to implement its obligations or its application of measures that led to these consequences. Thus, the mere occurrence of one of the causes is not enough by itself to pursue a dispute under the WTO unless it results in the nullification or impairment of benefits or the impediment of the attainment of the objectives of the covered agreement.

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[17] According to the World Trade Report (2008d, p.269), the total number of GATT/WTO disputes between 1948-2004 reached 772 cases; 271of which involved developing countries.

However, the wordings of Article 20.2 of the FTA do not link the "consequences" to the "causes". It authorises a party to resort to the DSP wherever it *considers that: (a) a measure of the other Party is inconsistent with its obligations under this Agreement; (b) the other Party has ... failed to carry out its obligations under the Agreement; or (c) a benefit the Party could reasonably have expected to accrue to it under* chapters two, four, nine, and fifteen *is being nullified or impaired as a result of a measure, whether or not the measure conflicts with the provisions of this Agreement.* Hence, these wordings clearly imply that the occurrence of any of these reasons (a, b, and c) separately is enough for any party to raise a dispute against the other party irrespective of whether that reason has affected the benefit of the other party. If the U.S., for instance, became to believe that Oman had undertaken a measure that was inconsistent with its obligations under one of the FTA chapters, the U.S. could initiate the dispute without having to prove that such action had resulted in the nullification or impairment of the benefits to the U.S. Clause (c) is the only provision in Article 20.2 that links "consequences" to "causes" as it enables a party to resort to the DSP of the FTA if its expected benefit has been nullified or impaired as a result of a measure undertaken by the other party. However, clause (c) is only one clause of three separate alternatives: (a), (b), and (c). A party can raise a dispute against the other party on the basis of any of these clauses. The word "*or*" mentioned after clauses (a) and (b), and before clause (c) confirms this view. Also, it is important to note that the application of clause (c) is only restricted to certain chapters of the FTA; namely chapter two (national treatment and market access for goods), chapter four (rules of origin), chapter nine (government procurement), or chapter fifteen (intellectual property rights). This restriction implies that if, for instance, Oman's expected benefits from the implementation of other chapters such as chapter three on textiles and clothing, are not achieved due to restrictive actions undertaken by the U.S., Oman will not be able to resort to the DSP against the U.S. on the basis that the U.S. actions have resulted into nullification or impairment of the benefits of chapter three for Oman. This is because chapter three is not among those chapters mentioned in clause (c). However, Oman can only raise the dispute against the U.S. on the basis of clauses (a) and (b), but must prove that the U.S. actions are inconsistent with its obligations or that the U.S. has failed to implement its obligations under the FTA.

5.4.2.2. Administration of dispute settlement proceedings

According to Article 2 of the DSU, DSP is administered by the Dispute Settlement Body (DSB), which has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance on implementation of rulings and recommendations, and authorise suspension of concessions and other obligations under the WTO agreements. The DSB consists of all WTO

members and its decisions are made by consensus. Hence, Oman has the opportunity to learn a lot from the decision making process of the DSB particularly in regard to the establishment of panels or the adoption of panels and Appellate Body reports. This opportunity of being an active participant of dispute settlement, without being a party to a dispute, is not available under the FTA. Administration of DSP under the FTA is much less structured than the WTO. Article 20.3 of the FTA requires each party to designate an office to be responsible for providing administrative assistance to panels. Hence, by no means can these administrative offices be compared with the well-established DSB with its clear sets of responsibilities and authorities. Also, under Article 20.3 of the FTA, each party is responsible for the operation and costs of its designated office and Oman must take the burden of such a requirement. However, such financial burden does not exist under the DSB. On the contrary, Oman, being a developing country, is entitled to get free legal assistance in cases of disputes as set out in Article 27.2[18]of the DSU. Oman can also receive even more productive and valuable assistance from the Advisory Centre on WTO Law (ACWL), which started its operation in October 2001 and whose main task is to provide legal advice on WTO laws to developing countries and economies in transition. This legal advice might be in a form of advisory opinions on certain questions of law, analysis of situations involving trade concerns, or legal advice provided throughout a dispute settlement proceedings (Orozco, 2002). These kinds of special assistance are absent from the FTA.

5.4.2.3. Choice of forum

Article 20.4 of the FTA stipulates that if a dispute arises on any matter under the FTA *and under the WTO Agreement, or any other agreement* to which both Oman and the U.S. are party, *the complaining Party may select the forum in which to settle the dispute*. Hence, the complaining party is free to select the forum which it feels appropriate to pursue dispute settlement without the need for the other party, the respondent, to agree on such a forum. The latter will only have to be informed by the complaining party, in writing, about its *intention to bring a dispute* against it through a particular forum and it has to go a long with the wishes of the complaining party. However, under the WTO, the mutual agreement of parties to a dispute is essential in selecting a particular way of settling the dispute. This forum can be one of the four alternatives 1) the DSU procedures 2) good offices, conciliation and mediation, which can begin at any time and be terminated at any time (Article 5), 3) or together; i.e. the DSU procedures in parallel to good offices, conciliation and mediation, and 4) arbitration (Article 25).

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[18] Article 27.2 of the DSU states that; *the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so requests.*

Also, the wordings of Article 20.4 of the FTA which states that *[w]here a dispute regarding any matter arises under this Agreement and under the WTO Agreement...., the complaining Party may select the forum in which to settle the dispute*, entails serious implications on Oman, particularly if it came to act more as the "party complained against". This sentence implies that if the U.S., for instance, raised a dispute against Oman under one of the WTO agreements, the U.S., according to Article 20.4, would not have to abide by the rules and procedures of the DSU. But, the U.S. could select any other forum of dispute settlement without having to secure the consent of Oman, even if the dispute was on one of the WTO issues. Thus, Oman would be deprived from its rights to pursue the dispute under the DSU and benefit from its special provisions for developing countries. As Peter Drahos (2008, p.3) puts it;

> The capacity of a strong state to choose, as it were, its legal battle ground has important implications for weaker states, especially in those cases where the stronger state shifts the contest out of the multilateral setting of the WTO. Weaker states are probably making themselves worse off by agreeing to such provisions.

5.4.2.4. Consultations

Both the FTA and the DSU provide opportunity to resolve disputes via consultations within 60 days or 20 days for perishable goods. However, the DSU provisions are more clearly and flexibly stipulated than those of the FTA. Article 4.3 of the DSU specifies time details from the very start of the process of consultations. If one member requests consultations, the other member is obliged to reply within 10 days and enter into consultations within a period of no more than 30 days after the date of receiving the request, unless they agreed otherwise. Hence, as the whole period set for consultation is 60 days -- in non-urgent circumstances -- and if the member to whom the request is made has consumed the full period of 30 days to enter into the consultations, then the minimum period that can be left for actual consultation under the WTO is no less than 30 days. But, if the member to whom the request is made does not respond within 30 days, the other member may request the establishment of a panel. Hence, the latter will not have to wait until the end of the 60-day period set for consultations. The maximum this member will have to wait before requesting panel establishment is 30 days, which is the period allowed for the other member to respond for the request and enter into consultations.

However, the FTA does not stipulate similar detailed time limitations for the process of consultations; thus leaving some loopholes that may be subject to disagreements in the future between Oman and the U.S. Article 20.5 of the FTA only requires the party to which the request for consultation is made to reply *promptly*, without specifying what is meant by "*promptly*". Also, unlike the WTO, Article 20.5 does not specify what should happen if the party to which the request for consultation is made does not reply to the request or refuse to enter into consultations.

This may imply that the party which requested the consultation cannot refer the matter to the Joint Committee – the next step -- until the whole period set for consultations ends; 60 days or 20 days for perishable goods.

In addition, as is indicated above, Article 4 of the DSU and Article 20.5 of the FTA allow a limited period of 20 days within which consultation on matters concerning perishable goods must be concluded, unless they agree otherwise. However, it is important to note that Articles 4.8 and 4.9 of the DSU refer to this situation as "*cases of urgency, including those which concern perishable goods*". This sentence implies that there can be other urgent cases that may need urgent resolution; perishable goods are only one example of these cases. But, Article 20.6 of the FTA only allows 20 days for consultations *where matter concerns perishable goods*. Thus, Article 20.6 only speaks about perishable goods without referring to other kind of urgent cases, which implies that stricter periods will not be applied to any other urgent cases except those which involve perishable goods.

Furthermore, Article 4.6 of the DSU emphasises that consultations shall be confidential. The idea is to allow members the opportunity to reach a mutually satisfactory solution without being distracted by outside pressures (WTO, 2007q). However, Article 20.5.3 of the FTA obliges parties *promptly after requesting or receiving a request for consultation* to seek the views of interested elements of society and other members of the public on the matter on which consultations are held. This obligation implies that any member or group of the public that finds itself interested would have the right to be consulted, and not doing so can be regarded as a breach of the FTA obligation. Such an obligation can put a lot of pressure on the Government of Oman, whose experience with NGOs is very limited.[19]

Moreover, under the WTO, the DSB acts as a supervisory administrative body of the whole dispute process starting from the consultations to the final stages of the dispute. According to Article 4.4 of the DSU, requests for consultations have to be notified to the DSB and the relevant Councils and Committees. If consultations fail, requests for establishing panels are also made to the DSB. However, under the FTA the absence of such an institutional supervisory body is evident and is attempted to be compensated by allowing either parties to refer the matter of dispute to the Joint Committee (JC) if consultations fail (Article 20.6). However, the JC role is only one step of dispute settlement under the FTA that comes after the failure of consultations. The JC do not act as a supervisory body of the whole dispute settlement process as is the case

[19] More discussions on the involvement of the public and NGOs in the DSP are provided in the analysis of panels procedures below.

with the DSB. According to Article 20.7 of the FTA, if the JC fails to resolve the dispute within 60 days – or 30 days in cases of perishable goods -- after the delivery of a written notification to the other party, the complaining party may refer the matter to a dispute settlement panel by notifying the other party in writing. Thus, the disputes would be pursued away from the JC.

Also, Article 4.11 of the DSU allows any third member which considers itself to have a substantial trade interest in consultations that are announced between two other members, to participate in the consultations provided that the member to whom the request for consultations was made agree to that. This is another flexible and useful provision that is not available in the FTA. If Oman, for instance, was requested to enter into consultations with the U.S. on any matter relating to one of the WTO agreements, Oman can coordinate position with other Gulf countries to act as third parties and back up Oman in its consultations with the U.S. Oman can follow the same tactic in the other stages of the dispute; the panel and the Appellate Body as third parties are allowed to participate in the hearings of those institutions. But, such opportunities are absent from the FTA. As Peter Drahos (2008, p.17) puts it:

> [T]he procedural rules of the DSU offer weaker states some scope for co-operation and collective action when it comes to defending or bringing trade actions. Putting it another way, one of the virtues of the DSU is that it offers weaker state the possibility of coalition-building and the formal involvement of the members of that coalition in the dispute.

5.4.2.5. Establishment of panel

Both trading systems entail provisions for establishment of panels as an alternative next step to consultation. They also share similar provisions about the importance of the objectivity, integrity, and the experience of the panelists. However, the DSU provisions are more comprehensible, detailed, and flexible than the FTA due to the following factors. Firstly, as is indicated above, if consultations fail under the FTA, the dispute will not be referred directly to a panel, as is the case under the DSU, but to the Joint Committee (JC). According to Article 20.7 of the FTA, the JC shall endavour to resolve the dispute within 60 days, or 30 days in cases of perishable goods, that start from the day of delivery of a written notification sent by the complaining party to the other party. If the JC fails to settle the dispute within these periods, a panel establishment would be sought. Hence, the role of the JC is no more than an extensive process of consultations. There do not seem to be substantial differences between the two steps (consultation and JC) as in each of them there are government officials from both sides attempting to reach a mediatory solution before reaching the panel stage. This means that the total period for consultations under the FTA, which include the stage of JC, can reach 120 days and 50 days for perishable goods. As the FTA is a U.S.-design, the only justification could be that the U.S. attempts to drag the process of consultations as long as possible so that political

pressures can be practised on Oman to reach a conclusion before it goes to the hand of the panelists.

However, the situation under the WTO is less time consuming and more comprehensible as if consultations fail, within 60 days or 20 days for urgent goods, the complaining party may request the DSB to directly establish a panel. The DSB is obliged to do so within a short period of time that does not go longer than its meeting following the one at which the request first appears as an item on its agenda.[20] Not only that, there is a footnote to Article 6 of the DSU which allows the complaining party, if it requests so, to call for a meeting of the DSB for the purpose of establishing a panel within 15 days of the request, provided that at least 10 days' advance notice of the meeting is given. Secondly, any request to the DSB for establishing a panel, as per Article 6.2, must be made in writing, specify whether consultations were held, identify the specific measures at issue, and provide a brief summary of the legal basis of complaint sufficient to present the problem clearly. These details are very important for the work of panel as they make its task easier based on clear background on the case. However, such details do not exist under the FTA, whose Article 20.7.1 only mentions that the request for establishing the panel shall be made in writing without clarifying what details should be included in the request.

Thirdly, Article 7 of the DSU sets out standard terms of reference of panels as the following;

> To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document....and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s).

But, these terms of reference are not obligatory as parties to a dispute are allowed to agree to different terms of reference, if they wish so, within 20 days from the establishment of the panel (Article 7.1, DSU). Also, the DSB may authorise its chairman to draw up the terms of reference of the panel in consultation with the parties, subject to their agreement within 20 days of the establishment of the panel. These terms of reference shall be circulated to all members (Article 7.3, DSU). However, the FTA does not provide similar provisions and it is not clear what should happen if Oman and the U.S. disagree about the terms of reference of a panel.

[20] The DSB holds between one-three meetings a month. In March 2008, the DSB held three meetings and in April 2008 it held two meetings (WTO, 2008g).

Fourthly, Article 20.7.3.a of the FTA states that: a panel shall have three members,[21] *unless the Parties agree otherwise*. The phrase *"unless the Parties agree otherwise*" implies that a panel may consist of as many members as the parties may wish as long as they agree about it. However, Article 8.5 of the DSU provides a much clearer and stricter provision that allows parties to a dispute to either agree about three-member or five-member panels. If they opt to the latter alternative, they must do so within no longer than 10 days from the establishment of a panel. An important implication of this difference is that panels under the FTA -- given the exception "*unless the Parties agree otherwise*" -- do not have to consist of odd numbers of panelists. They can be of four or six members as long as both Oman and the U.S. agree about that. If this takes place, panels would loose their decisive element, particularly if panelists equally disagree about reaching a solution and divide into two equal groups. This potential loophole is clearly avoided under the DSU.

Fifthly, Article 8.3 of the DSU clearly prohibits citizens of members whose governments are parties to the dispute or third parties from serving on a panel that is concerned with that dispute, unless the parties agree otherwise. The idea is to rule out any possibility of subjectivity or biasness by panelists towards their own countries. However, there is no equivalent clause with the same clarity in the FTA but there exist two vague clauses that can be subject to different interpretations. The first is Article 20.7.4.b, which states that the panelists shall be *independent of, and not be affiliated with or take instructions from, either Party*. The wordings of this clause do not seem to prohibit the parties from appointing their own national citizens as panelists. The main condition is that panelists act independently from their government. This implies that panelists under the FTA can be private national lawyers from the two parties. Nevertheless, the only noticeable reference in regard of the prohibition of appointing a national panelist by either parties is made in Article 20.7.3.c, which deals with the appointment of a third panelist as a chair of a panel. But even this Article entails some ambiguity. The first two lines of this Article read as follows; *[t]he Parties shall endeavor to agree on a third panelist as chair within 30 days after the second panelist has been appointed*. Hence, in these two lines, there is still no reference made about that a third panelist must be a non-national of either party. The rest of the Article states that: *if the Parties are unable to agree on the chair within this period, the Party chosen by lot shall select within five days as chair an individual who is not a national of that Party*. These wordings evidently imply that the third panelist; i.e. the chairman of the panel can potentially be

[21] Each party shall appoint one panelist, and they have to agree about the third one to act as a chair of the panel. If they do not agree within 30 days, he/she will be chosen by lot (Article 20.7.2).

a national citizen of either Oman or the U.S., if they mutually agree about that. Only if they do not agree on the appointment of the third panelist, the latter shall be non-national of either party.

Sixthly, the DSU provides a flexible, yet compelling, mechanism of panelists' selection. The Secretariat maintains a list of qualified individuals from which panelists can be chosen (Article 8.4). For each panel, the Secretariat shall propose nominations to the parties to the dispute, and the latter shall accept the nomination unless they have convincing reasons for not doing so. However, no such list exists under the FTA although parties are required to appoint panelists on the basis of *objectivity, reliability, and sound judgment and have expertise or experience in law, international trade, or the resolution of disputes arising under international trade agreement* (Article 20.7.4.a, FTA). But, while all these factors are determined and checked by the Secretariat under the WTO, it is not clear how such verification is done under the FTA! Moreover, if the two parties under the FTA do not agree about selecting the third panelist, the party chosen by "lot" will have the right to select the third panelist. However, this mechanism is quite peculiar and questionable particularly as it is not clear how the "lot" is carried out and who supervises it!! But, the situation under the WTO is much clearer. All the panelists are nominated by the Secretariat from the list held with it and none of them must be a citizen of member states whose governments are parties to the dispute, or even third parties. If parties to a dispute disagree about the Secretariat nominations within 20 days of the establishment of a panel, for compelling reasons, they do not resort to resolve the issue via "lot", but the Director-General (DG) shall determine the composition of the panel by appointing the most appropriate panelists in accordance with any relevant special or additional rules or procedures of the covered agreement. The DG does not carry out this task on his own initiative, but at the request of either party, and in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee as well as with the parties to the dispute (Article 8.7).

Seventhly, Article 11 of the DSU elucidates that the function of panels is to *assist the DSB in discharging its responsibilities* by making an *objective assessment* of the facts of the case, so that the DSB can make the right rulings. However, there is no similar provision in the FTA clarifying the function of the panel. Eighthly, Article 8.10 of the DSU allows any developing country member if it is involved in a dispute with a developed country member to request the inclusion of one panelist from a developing country; thus reflecting the recognition of the WTO founding fathers of the differences in the level of development between the two types of countries. Such a consideration is not found under the FTA. Ninthly, Article 20.7.4 of the FTA requires that in disputes that are related to a party's implementation of Chapter Sixteen (Labor), Chapter

Seventeen (Environment), and such other chapters as the parties may agree, panelists shall have expertise or experience relevant to the subject matter that is under dispute. The issues of labour and environment have been very contentious under the WTO and no agreements have been reached about them; an opposite situation to the FTA, which contains comprehensive and detailed chapters on these issues. Unlike the U.S., there are hardly few Omanis with legal expertise on the issues of labour and environment. This would mean that if Oman gets involved in a dispute with the U.S. on these issues, it may have to appoint a non-Omani legal expert, whereas the U.S. would be able to appoint a U.S. national panelist on the issue. Finally, under the WTO, panelists' expenses, including trade and subsistence allowance are covered from the WTO budget (Article 8.11 of the DSU). However, there is no such clause under the FTA which implies that Oman may have to bear the expenses of any panelist it selects.

5.4.2.6. Panel procedures: presentation of arguments and hearing

The DSU provides more specific and comprehensive provisions on procedures of panels than the FTA. Article 12.3 of the DSU requires each panel to fix a timetable for its process within one week after the composition of the panel and its terms of reference have been agreed upon. The timetable shall provide sufficient time for the parties to the dispute to prepare their submissions (Article 12.4) and should set precise deadlines for written submissions by the parties which should respect those deadlines (Article 12.5). Article 12.6 further sets out more details about how and when submissions should be made. Each party is required to deposit its written submission with the Secretariat which shall transmit them immediately to the panel and to other party or parties to the dispute. The complaining party shall present its first submission in advance of the responding party's first submission unless the panel, after consultations with the parties, decides that the parties should submit their first submissions simultaneously. All other subsequent written submissions shall be made simultaneously. However, all these details are absent from the FTA. Oman and the U.S., as per Article 20.8.1, will have to establish by the date of entry into force of the FTA a model of rules of procedures (MRP), which must ensure that each party has the opportunity to provide initial and rebuttal submissions and make sure that each party shall be given a *reasonable opportunity* to submit comments on the initial report of the panel. However, the word "*reasonable*" is ambiguous and open to different interpretations, whereas under the DSU there are clear time specifications for reports submissions. The MRP must also ensure that at least one hearing before the panel is made in public and that the panel shall consider requests from non-governmental entities (NGOs) located in the parties' territories to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the parties. The MRP must also ensure that confidential information is protected.

However, the FTA does not stipulate how such protection could be guaranteed in light of the requirement of publicising panels' hearings!

The U.S. has for many years attempted to introduce similar measures in the DSU but without a success due to strong opposition from developing countries (Al-Ahdab, 2003). President Clinton once proposed (cited in Croome, 1998, p.19) that *hearings by the WTO be open to the public, and all briefs by the parties be made publicly available.. the WTO provide the opportunity for stakeholders to convey their views... to help inform the panels in their deliberations.* The U.S. further argues that opening dispute settlement hearings at all stages to the public will add credibility to the DSP of the WTO as it will be perceived as a more neutral and transparent system. It will also help communities of different kinds in the world to understand the dispute settlement procedures (Al-Ahdab, 2003).

However, such proposals have not gained enough support from developing countries. The latter argue that the confidentiality nature of the multilateral DSP help WTO members settle their disputes by consensus more efficiently without being pressurised by outside elements. But, opening the hearings to the public would force each party to a dispute to hold tight to its position so that it would not appear as if it was compromising national interests. Also, involving NGOs in panels' hearings would result into situations where NGOs would have stronger rights than those accorded to WTO members (Levy and Srinivasan 1996; Al-Ahdab, 2003). Then, it would be difficult to determine who represents the global society; member states or NGOs. Therefore, the DSU emphasises in Article 14 the importance of the confidentiality of panels hearing and that *the reports of panels shall be drafted without the presence of the parties to the dispute*; thus to ensure greater neutrality and independence of the panelists from the parties to the dispute. *Opinions expressed in the panel report by individual panelists shall be anonymous.*

5.4.2.7. Panels' reports

The DSU provides more comprehensible and predictable details on each step of a panels' report than those provided for the FTA. Article 20.9.1 of the FTA requires the panel to present its initial report to the parties within 180 days after the chair of the panel is appointed. The final report shall be presented to the parties within 45 days of presentation of the initial report, unless the parties agree otherwise. Parties are obliged to release the final report to the public within 15 days thereafter (Article 20.9.4). Hence, the total period for the whole process from establishment of the panel -- the date of appointing the chair -- to the release of the final report to the public is 240 days; i.e. around eight months. However, the FTA does not stipulate what should happen if the

panel fails to issue its report within these specified periods. Under the WTO, this possibility is well-addressed, as is discussed below.

The maximum period allowed from the establishment of the panel to the circulation of the final report to the WTO members is nine months. But, there are big differences between the two trading systems concerning the details of how the period of a panel's report is dealt with throughout the different stages of the report. Firstly, as is indicated above, Article 20.9 of the FTA allocates a period of 180 days (six months), after the chair is appointed, for the panel to present its initial report only. But, Article 12.8 of the DSU demands that the whole process of the panel report shall not exceed six months starting *from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute*. Only, if the panel finds itself unable to issue the final report within six months, the period can be extended longer provided that the panel justifies to the DSB, in writing, the reasons for the delay and allocate a new deadline to finalise the report. However, Article 12.9 of the DSU clearly emphasises that in no cases shall the period from the establishment of the panel to the circulation of the report exceed nine months. Hence, whereas the eight-month period is the normal length of time that a panel report could take under the FTA, the nine-month period is the exception under the DSU.

Secondly, Article 12.8 of the DSU clearly provides that in urgent cases, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months only. However, this special consideration is not found under the FTA. Hence, the FTA can be criticised for lacking consistency with its provisions in regards of perishable goods. At the stages of consultation and the JC, the FTA recognises the importance of allowing shorter periods of time for perishable goods but at the panel stage such recognition is absent. This implies that if Oman raises a dispute related to a perishable good against the U.S. and the dispute is not resolved via consultation and the JC, the issue will have to await eight months for the panel procedures of issuing the final report, whereas this period is only three months under the DSU.

In another aspect, the initial report of a panel under the FTA, according to Article 20.9.1, must contain findings of fact and the determination of the panel about whether; 1) the measure at issue is inconsistent with the obligations of the FTA, 2) a party has otherwise failed to carry out its obligation, or 3) the measure at issue is causing nullification or impairment in the sense of Article 20.2.c. The panel may, at the request of the parties, make recommendations for the

resolution of the dispute (Article 20.9.2). The parties are given the opportunity to comment in writing on the initial report and the panel may modify its report and make any further examination it considers appropriate (Article 20.9.3). The panel shall then present the final report to the parties within 45 days of presentation of the initial report, unless the parties agree otherwise. The parties must release the final report to the public within 15 days thereafter, subject to the protection of confidential information (Article 20.9.3).

When comparing these steps with those of the DSU, it is found that the DSU offers more divined steps and provides parties to dispute better chances to comment on the panel report at each step. The first step of the report issuance is the so-called *the descriptive section* which, according to Article 15 of the DSU, shall be issued by a panel after its consideration of rebuttal submissions and oral arguments and shall state the facts and arguments of the dispute. Hence, as this report is only descriptive it does not include the panel's findings and conclusions. The parties to a dispute are given the opportunity to comment, in writing, on the descriptive report, within a period of time set by the panel. The idea is to allow each party to comment on the facts and arguments of the case that are going to be the base for the panel's findings.

However, this opportunity does not exist under the FTA as its first issued report is a draft of the final report and includes both the descriptive part of the dispute as well as the findings of the panel. Hence, the initial report of the FTA equals the so-called "interim report" of the DSU, which is the second stage of the report issuance under the DSU. After the expiration of the time set for the parties' comments on the descriptive report, under the DSU, the panel shall then issue an interim report which includes both the descriptive sections and the panel's findings and conclusions. At this stage, the parties to the dispute are given a second opportunity to comment in writing on the "interim report", within a period of time specified by the panel. If one of the parties requests so, the panel shall hold a further meeting with the parties on the issues identified in its written comments. If no comments are made within the specified period, the interim report shall be considered as the final panel report and shall be promptly circulated to the WTO members (Article 15.2). This opportunity of holding a further meeting to discuss the comments of the parties does not exist in the FTA. Also, Article 15.3 of the DSU obliges a panel to include in its final report *a discussion of the arguments made at the interim review stage*, but the FTA does not make such an obligation. Article 20.9.3 of the FTA states that *after considering any written comments by the Parties on the initial report, the panel may modify its report and make any further examination it considers appropriate.* The verb *may modify* implies that although the

parties under the FTA are given a chance to comment on the panel report before it comes final; there is no obligation that the panel includes parties comment in the report.

5.4.2.8. Implementation of the final report

Under the FTA, the parties have to agree on a resolution of the dispute within 45 days of receiving the panel report. The resolution shall conform to the determinations and recommendations of the panel report. But, unlike the DSU, the FTA contains no provisions that would enable parties to appeal against the panel reports (Articles 20.10.1 and 20.11.1); a fact that further confirms that the DSU is a more flexible and comprehensive system than the FTA. Under the FTA, if the panel report determines that a party has not conformed to its obligations or that its measure has caused nullification or impairment of the benefits of the other party in the sense of Article 20.2.c, *the resolution, whenever possible, shall be to eliminate the non-conformity or the nullification or impairment* (Article 20.9.2, the FTA). But, the expression *whenever possible* is indefinite and could provide a chance for the party complained against to avoid the implementation of the panel's determination and seeks other means. Similarly, Article 20.10.1 of the FTA states that; *on receipt of the final report of a panel, the Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations, if any, of the panel.* Hence, the expression "*normally shall conform*" undermines the parties' adherence to the determinations of the panel.

On the other hand, the DSU deals with the panel's final report in a way that provides parties to dispute enough opportunity to express their views about the findings of the panel with divined time restrictions. According to Articles 16.1 and 16.2, the final panel's report is circulated to all WTO members, which are given 20 days to consider the report before the adoption of the DSB. If there are any objections by members to a panel report, they shall provide written justifications for their objections at least 10 days before the DSB meeting at which the panel report will be considered. As is already indicated, this involvement of WTO members in the disputes settlement procedures allow for coalition building that can benefit small economies such as Oman. If Oman was a party to a dispute against the U.S. and was unhappy with the final report of the panel, Oman could seek to gain sympathy of other members such as Arab or Gulf countries. Such an advantage does not exist in the FTA.

Moreover, under the FTA the parties cannot change the final report of the panel once they have received it. But, under the DSU the parties to dispute can still express their views at the stage of the DSB consideration of the final report (Article 16.3). The DSB has to adopt the final report

within 60 days after the date of circulation of the report to WTO members except under two situations. The first is if one of the parties to the dispute notifies the DSB about its decision to appeal against the panel's report; an important opportunity that does not exist in the FTA. Another exception is if the DSB decides by consensus not to adopt the report (Article 16.4, DSU). However, as is already explain, this exception is impossible to happen in reality as the party to whom the findings of the report is made in favour will not choose to vote against itself.

5.4.2.9. Appeal process under the WTO

The appeal process mirrors the maturity of the multilateral DSP, where a third opportunity is provided for the parties to a dispute; after the stages of consultation and the panel (Article 17). However, only parties to the dispute may, in writing, appeal against a panel report, not the third parties. But, the third parties, when they have notified the DSB about their substantial interests in the dispute, can still make written submissions to the Appellate Body (AB) and they *shall be given an opportunity to be heard* by the AB (Article 17.4). The AB is a standing body established by the DSB and its main task is to hear appeals from panel cases (Article 17.1). The AB consists of seven members appointed for four-year terms on the basis of their recognised experience in the field of law and international trade. AB members must not be affiliated with any government and must not get involved in the consideration of any disputes that *would create a direct or indirect conflict of interest* (Article 17.3). The AB serves in rotation and its expenses are covered by WTO budget. The appeal is considered by three members of the AB (Article 17.1) -- possibly five (WTO, 2007q) -- and must be restricted to only those legal issues and interpretations of laws that have been developed in the panel report (Article 17.6). The AB may uphold, modify, or even reverse the legal findings and conclusions of the panel (Article 17.13). As is the case in the panel, the proceedings of the AB are confidential and its reports are drafted without the presence of the parties to the dispute (Article 17.10). Individual opinions of those serving on the AB are reflected in the AB report anonymously (Article 17.11). This further confirms the persistent aspect of confidentiality of the DSU.

The appeal procedures shall not exceed 60 days from the date a party to the dispute notifies the DSB about its decision to appeal against the panel report to the date the AB circulates its report (Article 17.5). But, if the AB considers that it will not be able to present its report within 60 days, it must inform the DSB in writing about reasons for the delay and give an estimation of the additional time required to submit its report to the DSB. However, this additional time must not exceed 30 days. Thus, the whole appeal process must not exceed 90 days (Article 17.5). The

DSB must adopt the AB report within 30 days of its circulation to the WTO members[22] and the parties to the dispute must unconditionally accept it (Article 17.14). This demonstrates the rigidity aspect of the MTS as after satisfying all possible means for the parties to settle their dispute via consultations and panel, the dispute must be concluded at the appeal stage. Once adopted by the DSB, the AB report must be implemented. It is also worth noting that the DSB, according toe Article 17.14, has the right to decide by consensus not to adopt the AB report. But, as is already discussed, this possibility can never happen in reality as the party to whom the appellate report's findings and recommendations are made in favour would automatically reject such a decision. Thus, the AB report will have to be adopted within the time period specified. Overall, in cases where an appeal has been made, the time taken from the establishment of the panel to the consideration of the report shall not exceed 12 months. If the panel report is not appealed, the period shall not exceed more than 9 months (Article 20). This whole important appeal process is absent from the FTA.

5.4.2.10. Implementation of panel/AB report under the WTO

DSU provisions on implementing the DSB rulings or recommendations, as defined in Article 21, provide opportunities for parties to a dispute to reach mutual agreements about when and how to implement the recommendations. The party concerned with the implementation shall within 30 days of the DSB adoption of the panel or the AB report, inform the DSB about how it intends to implement the rulings of the DSB (Article 21.3). The DSB shall observe the implementation (Article 21.6). The issue of the implementation *shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time* [allocated for the implementation] ... *and shall remain on the DSB's agenda until the issue is resolved* (Article 21.6). Before each meeting of the DSB, the member concerned has to provide the DSB with a written report on the status of implementation. However, similar provisions about how to supervise the implementation of the final report do not exist under the FTA.

But, what if the offending party finds it difficult and impractical for its economic interests to comply immediately with the recommendations and rulings of the DSB, or of the panel report under the FTA? The DSU recognises such circumstances and provide three opportunities of *reasonable period of time* that the concerned party can undergo through as defined in Article 21.3. But, these flexible arrangements do not exist in the FTA. Firstly, the offending party can

[22] It can be noticed that at the panel stage, there is a period of 20 days given to WTO Members to consider the panel report before its adoption by the DSB but, at the AB stage there is no time allocated for WTO Members to consider the AB report before the adoption of the DSB.

propose a period of time in which it can implement the rulings of the DSB but that is subject to the DSB approval at its meeting held within 30 days after the date of the adoption of the panel or AB report by the DSB. If it happens that there is no DSB meeting held during this period, a special meeting shall be held for this particular purpose. If the proposed period is approved by the DSB, the implementation will proceed accordingly. Secondly, if the DSB's approval is not secured, the offending party still has the chance of negotiating the issue with the other party. A mutual agreement has to be reached within 45 days starting from the date of the DSB adoption of the recommendations and rulings. Thirdly, if a mutual agreement is not reached, the period of time of the implementation shall be determined through arbitration within 90 days after the date of the DSB adoption of the recommendations and rulings; i.e. within additional 45 days after the failure of the mutual agreement. The arbitration shall be carried out by an arbitrator mutually agreed upon by both parties to the dispute. But, if they do not agree within 10 days after the matter being referred to arbitration, the Director General (DG) of the WTO shall appoint the arbitrator within another period of 10 days after consulting the parties. All these flexible alternatives do not exist in the FTA.

But, what if the final report of a panel under the FTA or the DSU appears to be inconsistent with the provisions of the FTA or the DSU? How is this possibility addressed by each system? The FTA provides no answer to these questions but Article 21.5 of the DSU states that resolving disagreements on this issue will be through recourse to the DSU procedures including resorting to the original panel, wherever possible. In such cases, the panel is required to circulate its report within 90 days of the date when the matter was referred to it. If it is not practicable, the panel will give its reasons to the DSB along with an estimate of the additional time required. Another important question is; what if the offending party, under both trading systems, did not implement these rulings and recommendations? How can the complaining party retaliate to that? The answer is provided in the next section.

5.4.2.11. Non-implementation of the final report

5.4.2.11.1. Compensation and suspension

Article 20.11.1 of the FTA determines that if the parties fail to reach a resolution within 45 days of receiving the final report, or in other agreed period, the party complained against must enter into negotiations with the other party *with a view to developing mutually acceptable compensation*. But, if compensation is not agreed about within 30 days, or if it was agreed about but the complaining party considers that the other party has failed to implement the agreed compensation, the complaining party may at any time thereafter provide a written notice to the

other party that it intends to suspend the application to the other party of benefits of equivalent effect. The notice shall specify the level of benefits that the party proposes to suspend and the complaining party may begin suspending benefits 30 days of the date of its notice (Article 20.11.2).

Quite similarly, but more comprehensibly, the DSU provides more detailed arrangements on suspension and compensation than those of the FTA. In cases where recommendations or rulings of the DSB have not been implemented within the approved time frame, the complaining party can request the offending party to enter into negotiation to mutually agree about compensation. As is the case in the FTA, the offending member is obliged to enter into such negotiation (Article 22.2). But, if they do not agree on compensation within 20 days after the date of expiry of the reasonable period of time allocated for implementation[23], the complaining party may request the DSB for authorisation to suspend some concessions or other obligations in respect of the offending party but it must state the reasons for its request (Article 22.2). Upon such a request, the DSB is obliged, according to Article 22.6, to grant the complaining party the authorisation of suspension within 30 days of the expiry of the reasonable period of time allocated for implementation, unless the DSB decides by consensus to reject the request, which is impossible to happen as the affected member will not vote against itself.

The big difference is that in cases of failure of reaching mutual agreement on compensation, the affected party under the FTA can on its own accords suspend the application to the other party of benefits of equivalent effect provided that it notifies the other party. But, under the DSU, the affected party cannot do that by itself, but any proposed suspensions have to be authorised by the DSB according to a set of principles and procedures outlined in Articles 22.3 and 22.4. The level of the suspension shall be equivalent to the effect of the nullification or impairment (Article 22.4). Article 22.3 of the DSU specifies three alternatives that the complaining party can consecutively apply when considering the type of concessions and obligations to suspend, so that the complaining party would not misuse the DSB authority of suspension. The first is suspension with respect to the same sector/sectors in which the violation or other nullifications or impairment is found. But if this level of suspension is found not practicable or not effective enough, suspension can be extended to other sectors but under the same agreement in which the violation or other nullifications or impairment is found. If suspension of the second alternative is still not effective enough to impose the same effect of the violation or nullification or

[23] While the FTA provides 30 days for compensation to be agreed about, the DSU allows a shorter period of 20 days for this purpose.

impairment, suspension can be extended to another covered agreement. If the complaining party decides to request the DSB authorisation of the second and third alternative, it must state the reasons for its request. The request must also be forwarded to the relevant Councils and sectoral bodies (Article 22.3.e).

Moreover, Article 22.8 of the DSU emphasises that the suspension of concessions or other obligations is a temporary solution and shall only be applied until it becomes apparent that the causes of the disputes have been overcome. This result can be reached when the measures that were found inconsistent with a covered agreement has been removed, or the member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached (Article 22.8). These emphases on the temporary status of suspension measures are not found in the FTA. But, what if the other party against whom the suspension is practised objects to the level of suspension proposed? How is this situation addressed in the two systems? The answers to these questions are provided below.

5.4.2.11.2. Special consideration related to non-implementation

Both systems provide opportunity for the party against whom the suspension is practised to object to the level of suspension. However, the DSU provides clearer and more detailed terms than the FTA. According to Article 20.11.3 of the FTA, the party complained against can request for reconvention of the original panel if it considers that: 1) the level of benefits that the other party has proposed to be suspended is *manifestly excessive*, or 2) if it considers that it has eliminated the non-conformity or the nullification or impairment that the panel has found. The request shall be made in writing within 30 days of the written notice of the complaining party of its intention to apply the suspension. *The panel shall reconvene as soon as possible after the delivery of the request from the Party complained against to the other Party.* However, the terms *"manifestly excessive"* and *"as soon as possible"* are very wooly and may be subject to different interpretations by each party. If the panel has reconvened to look into only one of the two above-mentioned claims of the party complained against, the panel shall present its determination to the parties within 90 days after its reconvention. But, if the panel has reconvened to consider both claims, it shall present its determination within 120 days (Article 20.11.3, the FTA).

On the other hand, Article 22.6 of the DSU terms the process of referring the matter to the original panel as *arbitration* which takes place if the party complained against objects to the level of proposed suspension. As a general rule, this arbitration shall be carried out by the original panel, if members are available, but, if not, by an arbitrator appointed by the Director-

General. This specific consideration of the possible unavailability of the members of the original panel does not exist in the FTA. Thus, it is not clear how this situation would be dealt with under the FTA, if members of the original panel were not available! The period of time allowed under the DSU for the whole process of the arbitration shall not exceed 60 days from the date of the expiry of the reasonable period of time allocated for implementation (Article 22.6). This period implies that the process of reconvention of the original panel to look into complaints on the suspension level is shorter under the DSU than the 90 day or 120 day periods of time under the FTA, as is explained above. Also, despite these long periods, the FTA does not clarify whether or not the suspension would continue to be carried out during the reconvention of the panel. But, this issue is clearly addressed in the DSU, whose Article 22.6 prohibits the suspension of the *concessions or other obligations ... during the course of arbitration.*

Moreover, according to Article 20.11.3 of the FTA, if the reconvened panel finds out that *the level of benefits proposed to be suspended is manifestly excessive, it shall determine the level of benefits it considers to be of equivalent effect.* The verb *"shall"* clearly implies that this is an obligatory provision that the panel must carry out. However, Article 20.11.4 states that;

> the complaining Party may suspend benefits up to the level the panel has determined under paragraph 3 [Article 20.11.3] or, if the panel has not determined the level, the level the Party has proposed to suspend under paragraph 2 [Article 20.11.2], unless the panel has determined that the Party complained against has eliminated the non-conformity or the nullification or impairment.

Hence, the sentence *"if the panel has not determined the level"* in Article 20.11.4 implies that the reconvened panel may or may not determine the level of the benefits to be suspended, which contradicts with the obligatory requirement of Article 20.11.3 that the panel "*shall determine the level of benefits it considers to be of equivalent effect*", if it has found that the level of suspension is manifestly excessive.

Also, Article 20.11.4, surprisingly, does not oblige the complaining party to adhere to the determinations of the reconvened panel, as it states that *the complaining Party may suspend benefits up to the level the panel has determined under paragraph 3.* This imposes a serious question about the whole purpose of the reconvention of the panel, as its determination at this important stage may still not be adhered to! Not only that, the last part of Article 20.11.4 is even more obscure as it states that *if the reconvened panel has not determined the level* of the suspension -- which is ironically the purpose of its reconvention -- then *the complaining party may suspend benefits up to the level that the panel has proposed under paragraph 3 or, if the*

panel has not determined the level, the level the Party has proposed to suspend under paragraph 2. The last underlined part means that the complaining party can continue the same level of suspension of benefits that it initially proposed to apply before the reconvention of the panel. Thus, this permission poses serious questions about the entire process of the reconvention of the panel whose objective, in the first place, is supposedly to provide an opportunity for the party on whom the *manifestly excessive* suspension is practised to object to such suspension. Why is then the complaining party allowed to suspend the level of benefits it has chosen by itself in the first place? What would happen if the other party continued to object about the suspended level of benefits and still regard it as "*manifestly excessive*"?! There would be no solution provided to the party complaint against but only either to yield to the suspension of benefits from the other party even though it was "*manifestly excessive*", or to pay an "annual monetary assessment" to the other party, which is a form of "financial penalty", as it is explained below.

However, all of these weaknesses are avoided in the DSU whose Article 22.7 patently states that the decision of the arbitrator (the reconvened panel) is final and the parties must accept it and cannot seek a second arbitration. The decision of the arbitrator shall then be informed to the DSB which in turn, upon the request of the complaining party, shall grant authorisation to suspend concessions or other obligations only if the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request, which is impossible to happen, as is already explained. Moreover, Article 22.7 specifies the task of the arbitrator as well as its limitations. The arbitrator shall not examine the nature of the concessions or other obligations to be suspended, but shall only determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension or concessions or other obligations is allowed under the covered agreement and the arbitrator shall examine any claim in relation to the above-mentioned principles and procedures.

5.4.2.12. Annual monetary assessment

The FTA introduces additional measure called "annual monetary assessment" that finds no equivalent in the DSU. If this measure is implemented, the suspension of benefits will not be carried out. According to Article 20.11.5[24] of the FTA, if the party complained against provides a

[24] It is important to note that Article 20.11 of the FTA does not apply where a panel has made a determination with respect to the application and enforcement of labour (Chapter Sixteen) or environment (Chapter Seventeen). These two issues are separately dealt with in Article 20.12, which provides even stricter measures on the party complained against than those under Article 20.11. More explanation is provided in the next section of this chapter which deals with labour issue.

written notice to the other party that it will pay an annual monetary assessment, the complaining party may not suspend the benefits. The notice for the annual monetary assessment shall be made either; a) within 30 days after the complaining party provides a written notice to suspend benefits, or b) within 20 days after the reconvened panel provides its determination. Then, no later than 10 days after the party complained against provides its notice offering "annual monetary assessment"; the parties shall consult with each other with the view to reach an agreement on the amount of the assessment. The complaining party must enter into such negotiations. If no agreement is reached within 30 days after consultations begin, Article 20.11.5 sets out an obligatory amount equals to 50 percent of the level of the benefits the reconvened panel has determined, or if the latter has not determined the level, 50 percent of the level that the complaining party has proposed to suspend in the first place. Hence, it is not clear why the annual monetary assessment is made only 50 percent. Initially, the complaining party is supposed, according to Article 20.11.2, to suspend the application to the other party of benefits of equivalent effect. Thus, it should logically be entitled to get 100 percent annual monetary assessment to fully compensate the effect. However, as the complaining party, on the other hand, is free to suspend the application to the other party of benefits to any level it wants, with very little actions that can be taken by the party complained against, as the above analysis demonstrates, the complaining party can exaggerate in its suspension level beyond the equivalent effect. Hence, the 50 percent annual assessment may fully compensate the actual effect suffered by the complaining party and may even exceed it!

The monetary assessment shall be paid to the complaining party in U.S. currency, or in an equivalent amount of the Omani currency, in equal, quarterly installments beginning 60 days after the party complained against gives notice that it intends to pay an assessment. Hence, the "monetary assessment" seems to be no more than agreed "financial penalty" that the party complained against chooses to pay in order to avoid the consequences of the suspensions of benefits exercised by the complaining party. As the complaining party can suspend the level of benefits that it has set for itself to be of equivalent effect -- in light of the weak role of the reconvened panel -- the party complained against finds itself confronted to choose either to be a subject to the suspension, which can be excessively damaging, or to pay to the complaining party an annual monetary assessment. However, if the party complained against fails to pay the monetary assessment, the complaining party may suspend the application of benefits, irrespective of how excessive it was.

5.4.2.13. Other means of settling disputes in the WTO

Article 5 of the DSU allows parties to a dispute to resort to "good offices, conciliation and mediation" (GOCM) of the Director General of the WTO to settle their dispute. Any party to a dispute can request to use GOCM but it can only be implemented if the two parties to the dispute agree to use it. GOCM may start at any time of the dispute and can be terminated at any time and it may also continue while the panel process is sill ongoing. GOCM shall be conducted in a confidential way. If GOCM takes place within 60 days of the date of receiving a request for consultations, the complaining party must wait till the end of the 60-day period before requesting the establishment of a panel. The idea is to allow the parties sufficient time to resolve their dispute before taking it to the panel stage. Only if the parties to a dispute jointly agreed during the 60 day period that GOCM has failed, a request for establishing a panel to look into the dispute can be made by the complaining party. However, the FTA, on the other hand does not contain similar provisions.

In addition, the WTO allows parties to dispute to resort to "arbitration" to settle their disputes. This is different from the arbitration of the reconvened panel that is explained above. Hence, arbitration under the WTO should be looked at from two angles. The first is, as is mentioned above, obligatory which means that arbitration (reconvened panel) is a step that has to be taken if the offending party objects to the level of the proposed suspension or claims that the principles and procedures on compensation and suspension of concessions as outlined in Article 22 have not been properly followed. The second angle is voluntary which means that parties to a dispute can resort to arbitration as another quicker alternative means of dispute settlement provided that the parties mutually agree to undertake this alternative. Once agreed, parties to the dispute must notify all members to the WTO about their decision to resolve their dispute via arbitration. This notification must take place sufficiently in advance before the start of the arbitration proceeding. Other members may become party to arbitration provided that the parties to the dispute mutually agree about that. The latter have to agree to abide by the arbitration decision which shall be notified to the DSB and the Council or Committee of any relevant agreement. If one of the parties to the dispute, or any other member, has any concern about the arbitration decision or feels that it has been adversely affected by the decision, it can express its concerns at the meeting of the DSB or the relevant Council or Committee. Implementing the arbitration decision shall be conducted along the same lines as that for the recommendation and ruling of a panel as outlined in Articles 21 and 22 of the DSU whose substance has already been explained above. However, the FTA does not provide similar alternative means for dispute settlement.

5.4.2.14. Special provisions for developing countries

Unlike the FTA where there is no consideration given to the differences in the level of development between Oman and the U.S. and where Oman must abide by the U.S. designed provisions of dispute settlement in equal footing with the U.S., the DSU contains special provisions that provide certain considerations and flexibilities for developing countries. These provisions can provide a more considerate environment for Oman in cases of disputes with other WTO members as is outlined in appendix (5.2)[25] than the FTA. Scholars such as Valentina Delich (2001) and Robert Hudec (2001) describe these clauses as more declarative than operative. But, although this could be true the mere existence of such clauses, I argue, reflects the conviction of the WTO legal system about the importance of providing developing countries with special considerations that can be improved in the current Doha Round negotiations. Oman should cooperate with other developing countries to foster such changes. However, such an opportunity does not exist under the FTA.

5.4.3. Policy implications

The analysis of this section has clearly demonstrated that although the two trading approaches may appear to provide similar steps of dispute settlement; consultation, establishment of a panel, compensation, suspension, they differ in much of the details. The study finds out that the DSU is a more robust rule-oriented, comprehensible, and comprehensive system than the FTA. The DSU has learnt from the past experiences and demonstrated its efficiency in administering trade disputes between WTO members. The number of developing countries that have used the multilateral DSP has increased over the years, thus further demonstrating the efficiency of the system.[26] However, dispute settlement of the FTA is still untested and contains many loopholes and ambiguous terms that may cause future disagreements between Oman and the U.S. Also, the DSU provides parties to the dispute with the right to appeal against the panel report, via the standing Appellate Body, but the FTA does not. Disputes settlements under the WTO are supervised and administered by the DSB which acts as an authoritative and monitoring body to whom all procedures shall be notified. The DSB authorises panels' establishments and observe implementation of findings. As a member to the WTO, Oman shares this authority. Under the

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[25] There are also special provisions provided for least-developed countries as outlined in Article 24. Article 24.1 states that if the dispute involves a least-developed country, particular consideration will be given to the special situation of that country. In these cases, members are to exercise due restraint in raising matters under the dispute settlement procedures, asking for compensation, seeking authorisation for retaliation or exercising other rights. Article 24.2 states that if consultations involving a least-developed county fail, the country may request the Director-General or the DSB Chairman to offer his good offices before a request for a panel is made.

[26] According to the World Trade Report (2008d, p. 269) the number of disputes that involved developing countries was only 2 in the period 1968-77, which increased to 41 in 1978-87, and then to 57 in 1998-94. This number substantially increased to 139 disputes in 1995-2004.

FTA such a body does not exist. The power of the stronger; the U.S., would likely determine the fate of the dispute.

In addition, DSP of the FTA seems to be designed to serve more the complaining party than the party complained against. The former can independently choose between different forums under which it can conduct the dispute; either under the FTA or the WTO, or any other agreement between the two countries without the need for the consent of the other party. Even on matters that are related to the WTO agreements, the complaining party can shift the dispute to the FTA procedures. As the U.S. is known to be one of the most active users of the multilateral DSU, and as it is expected that the U.S. will undertake more the role of the complaining party in the FTA, these provisions could have serious implications on Oman. Oman may find itself deprived from the benefit of using the WTO dispute settlement system in its trade disputes with the U.S., even if the dispute was on a WTO agreement.

Furthermore, the FTA plays down the findings of the panel especially when it is reconvened at the request of the party complained against objecting to the "manifestly excessive" level of suspension of benefits. Hence, this party would find itself confronted; either to allow the excessive suspension to continue or to pay "monetary annual assessment" (annual financial penalty). These measures seem to be designed in away to help the complaining party exercises greater pressures on the party complained against.

It is important to note that Article 20.11 of the FTA, which provides "the monetary annual assessment" as another alternative to suspension of benefits, does not apply to chapters 16; labour and 17; environment. If a panel has made a determination with respect to the application and enforcement of these two issues, Article 20.12 is applied, which does not provide any opportunity for members to negotiate on compensation or suspension of benefits. But, immediately after the findings of the panel, a financial penalty of no more than $15 million annually will be imposed on the offending party.[27] Moreover, the DSU emphasises the importance of the confidentiality of the procedures of the settlement, but the FTA obliges the parties to publicise them and consult the other interested groups about the dispute. The U.S. has failed to introduce such measures in the WTO due to objections of developing countries but managed to do so in the FTA. Oman will have to meet these obligations under the FTA that other developing countries are exempted from. Likewise, the DSU permits the participation of third

[27] In-depth analysis on this issue is provided in the next section of this chapter.

parties into a dispute, which can enable Oman to build coalition with other developing countries in its disputes, but such an opportunity is absent from the FTA.

Similarly, the DSU clearly emphasises that all panel members that look into a dispute are not nationals of either parties to the dispute, but the FTA does not make this point very clear. It is assumed that panel members may be national citizens from the U.S. and Oman as long as they act independently and are not affiliated with the governments of the two countries. Under the DSU, panelists are normally selected from a list kept with the Secretariat on the basis of their specialisations and experiences. Such a list does not exist in the FTA. The selection by "lot" of the third panelist, who would act as a chair of the panel, is quite unusual and it is not clear how the "lot" would be implemented and who would supervise it! Besides, the DSU provides alternative flexible means of pursuing disputes such as good offices, conciliation and mediation provided by the Director-General of the WTO; a process that can be undertaken in parallel with panel's hearing. The parties can also resort to arbitration to hasten the process of their disputes, but the FTA does not provide such alternatives.

The WTO also provides special provisions and legal assistance for developing countries, which can further be improved in the current Doha negotiations, but the FTA does not entail such considerations. Finally, the approximate period of time that a dispute process might take under the DSU -- from the start of consultation to the adoption of the report by the DSB, in cases there is no appeal made and that panel does not exceed the allocated six months to represent its final report -- is 345 days. For similar stages, the dispute process under the FTA takes a longer time of 470 days. But, if an appeal is made and both the panel and Appellate Body do not exceed the six month and 90 day periods allocated for them respectively to present their reports, the dispute process takes an approximate total time of 435 days under the DSU. Although this period entails the appeal process, it is still 35 days shorter from the 470 days length of the dispute process under the FTA, which does not allow appealing against the panel's report (see Appendix 5.3). In other words, not only could Oman under the multilateral dispute settlement take an advantage of the appeal opportunity which is not available under the FTA, the overall period of time for the whole dispute process could take much shorter times under the WTO than the FTA. Because of all these findings, Oman is better situated under the WTO than the FTA. The WTO arrangements in regard to dispute settlement are more flexible, comprehensive, and comprehensible than those of the FTA. Oman faces better policy choices under the multilateral WTO approach than the bilateral FTA approach.

5.5. Labour standards

5.5.1. Labour standards under the WTO: a contentious issue

Labour standards relate to ways workers are treated and essentially entail prohibitions of: forced labour, exploitative use of child workers, and discrimination in the work place. Labour standards also involve permitting free association of workers, collective bargaining, and expression of grievances (Maskus, 1997). Members to the International Labour Organisation (ILO), such as Oman, are required to abide by these standards. The U.S., Canada, and the EU sought to integrate these core labour standards into the WTO legal system through which trade measures such as "sanctions" could be imposed to ensure that minimum labour standards are met (Stern, 2000). The issue of linking labour standards to trade agreements has been one of the most debatable topics in the literature of international trade (Steiner and Alston, 1996; Krueger, 1997; Stern, 2000; Brown and Stern, 2008).

Those who favour incorporating labour standards to trade agreements base their views on two grounds. The first is "social" where promoting international labour rights is believed to be a necessity that reflects the promotion and protection of the whole international community (Tay, 2002). Increasing concerns of different social groups in developed countries about workers' rights in other countries is a natural phenomenon that goes a long with the increases of international economic interdependence between countries. As the WTO has sought to liberalise trade between nations to achieve public goods, it should also seek to promote labour rights and human dignity, so that improvement of workplace conditions in all member countries of the WTO can be achieved (Anderson, 1998; Steiner and Alston, 1996). Thus, it is unfair to trade with those countries whose exports are the result of abuses of workers and child labour. Through WTO rules and disciplines all members would be obliged to improve workplace conditions in their markets. Trade measures such as sanctions can be necessary to make these countries respect and implement labour rights (WTO, 2007q).

The second argument is "economic" where it is argued that labour rights are a cost factor that affects the overall ability of a factory to produce goods at attractive prices, compared with factories in other developing countries where labour rights are not practised (Anderson, 1998; Hoekman and Kostecki, 2001). As companies operating in developed countries are obliged to implement high labour standards they feel that they are put at a cost disadvantage compared with developing countries with lower standards; thus leading in the end to unfair practice of free trade. Hence, some businesses in the developed world might find themselves in an unavoidable position to lower their labour standards to the level of some developing countries; a process that

is termed a "race to the bottom", so that they can stay competitive to attract investors (Hoekman, Matto, and English, 2002, p.466, Rodrik, 1997).

However, developed countries' attempts to incorporate labour standards in the MTS proved to be unsuccessful due to strong opposition from developing countries. The latter feared that labour standards could be used by developed countries as means of protection to restrict imports from developing countries; thus undermining their comparative advantages of low wages and cheap labour (WTO, 2007q). Those who argue against the incorporation of labour standards into the legal texts of the WTO base their views on the following grounds. Firstly, issues related to free trade have not proven easy to agree about. Despite the big improvement in the MTS there are still other more directly trade related issues that are far more imperative to resolve by the WTO, such as agriculture, than taking on new issues such as labour rights (Tay, 2002). Secondly, this does not mean that developing countries do not recognise the necessity of observing basic labour standards such as the prohibition against slavery and other forms of forced labour, but these standards are the direct responsibility of another separate organisation, the ILO, that has been established since 1919 (Bhagwati, 2001b). The ILO has the unique tripartite structure of representation from labour, businesses, and government sectors in each member country and is responsible for promoting international labour standards through a series of conventions (ILO, 2002). Thus, there is no need for another organisation of completely different task and nature; the WTO, to take on the responsibilities of the ILO (WTO, 2007q). Rather than incorporating labour standards into the WTO legal texts, the focus should be made on how to improve the effectiveness of the ILO and its functionalities. As Robert Stern (2000, p.17) puts it: *[w]ith sufficient encouragement and increased financial support, the ILO can provide multilateral forum that would serve to strengthen its role and authority in pursuing improved standards internationally.*

Thirdly, Article XX of the GATT provides enough provisions to reflect WTO commitments towards core labour standards. The Article permits members to adopt or enforce any measures that are essential to protect public morals, human, animal or plant life or health, or *relating to the products of prison labor* (WTO legal system, Articles XX:a,b,e). Fourthly, trade measures such as sanctions may not be effective tools to ensure commitments to core labour standards. Assistance measures in promoting and improving ways of living and education can yield more effective results *than trade sanctions in discouraging the use of child labor* (Maskus, 1997). For instance, banning goods that are produced by child workers without any further actions to develop and help these children to be educated might not only result in the closure of the

factories they work in but they might also find themselves abandoned in the street; being turned into criminals or prostitutes (Maskus, 1997; Tay, 2002).

Fifthly, differences in standards between countries; such as the availability of skilled and unskilled workers in one market, their readiness to work with low wages and for long hours, their working culture, ways of living, and types of education, all reflect the natural *differences in resource endowments and societies' preferences* (Anderson, 1998, p.250). These differences give developing countries rightful comparative advantages over developed countries and the latter must accept this reality (Tay, 2002). Sixthly, there is no empirical evidence to support the claim that implementing high level of labour standards affects exports or export prices and displace companies operating in the U.S. or other developed countries at competitive disadvantage (see Rodrik, 1997; Stern, 2000; Stern and Terrell, 2003). Robert Stern (2000) argues that labour standards vary from one country to another due to differences in policies, national distinctiveness, and institutions. Thus, *the case for devising WTO rules and disciplines to improve core labor standards in low-income countries cannot be convincingly made..[T]here are no compelling theoretical and empirical grounds to support the international enforcement and harmonization of labor standards* (Stern, 2000, p.1). The issue of "racing to the bottom" is no more than a myth created by interested businesses in developed countries to support their claim. Labour standards are craftily used by these countries as a means of protection to restrict imports from developing countries and undermine their comparative advantage of lower wage labour (Tay, 2002).[28]

> [M]any developing countries...argue that the campaign to bring labour issues into the WTO is actually a bid by industrial nations to undermine the comparative advantage of lower wage trading partners, and could undermine their ability to raise standards through economic development, particularly if it hampers their ability to trade. They also argue that proposed standards can be too high for them to meet at their level of development. These nations argue that efforts to bring labour standards into the arena of multilateral trade negotiations are little more than a smokescreen for protectionism (WTO, 2007q, p.75).

The concerns of developing countries were addressed in the Singapore MC Declaration (1996), whose paragraph 4 emphasises that although WTO members recognised core labour standards and reaffirmed their commitment to them, these standards are better addressed and dealt with by the ILO. The WTO Secretariat shall continue its collaboration with the ILO Secretariat. The Declaration accentuates that these standards should not be used as a tool of trade protectionism. The comparative advantage of countries, especially low-wage developing countries, must not be

[28] Similar argument against the incorporations of labour standards in trade agreements is made by Jagdish Bhagwati in his testimony on March 20, 2001 before the Senate Finance Committee on the U.S.-Jordan FTA (see Appendix 3.2).

put into a question (WTO, 1996). At Seattle MC, the U.S. attempted to re-introduce the issue of labour standards with the proposal of creating a working group within the WTO or a body that can be operated jointly by a number of international organisations to study the issue. However, the effort once again failed due to the persistent rejection of developing countries and the subsequent failure of the Ministerial in the end. After that the issue was not included for negotiations in any of the WTO work (WTO, 1999b). The Doha MC further reaffirmed, in its paragraph 8, the Singapore declaration on labour.

5.5.2. Labour standards under the FTA

The U.S. has sought to incorporate labour standards in its free trade agreements with other countries, and the Oman-U.S. FTA is no exception. Thus, Oman is obliged to abide by the U.S. designed rules that are set out in chapter sixteen of the FTA; rules that developing countries collectively managed to avoid to be incorporated in the WTO legal texts. Multilateral trading arrangements have provided enough shields for Oman not to link its trade obligations with labour standards, but the FTA has lifted those shields. As Vilailuk Tiranutti (2008) puts it:

> ...developing nations may have successfully defeated a push by developed countries to include labour issues in the WTO agenda during its 1996 negotiation round in Singapore...But labour issues will never leave the trade territory, especially now that advanced nations have lost their competitive advantage to developing economies in terms of labour costs. It is only inevitable that rich countries will try to enforce labour standards on poorer nations by means of bilateral trade agreements...as an attempt to bring developing countries labour costs' to par with their own, in a hope that this will level the playing field for them in the international trade battle.

Not only that, Oman has been heavily criticised by many U.S. associations for its lack of implementations of labour standards (Citizens Trade Campaign, 2006a,b), but under the WTO Oman never experienced such criticism. The Government of Oman was accused of abusing workers, exploiting them, and depriving them from their basic rights. Similar criticism was raised by some U.S. Democrats in the House of Representatives such as Rep. Charles Rangel of New York and Rep. Sander Levin of Michigan and Cardin. Heavy criticism came also from the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) and Citizens Trade Campaign (CTC) -- a coalition of different U.S. NGOs – which claim that *workers in Oman are denied basic labor rights*, and that foreign workers are *especially vulnerable to abuse and exploitation*. The LAC-CTC described Oman as *a destination country for women and men who migrate legally and willingly from South Asia...for work as domestic workers and laborers but are subsequently trafficked into conditions of involuntary servitude* (The LAC, 2005, p.8). Even heavier criticism was made by Thea M. Lee (2006), Director of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). In her testimony before the

Subcommittee on International Trade of the Senate Committee on Finance on the implementation of the Oman-U.S. FTA, Lee accused Oman for not complying with the labour standards of the ILO and claimed that Oman systematically denied workers their right of freedom of association. Lee also accused Oman for its highly strict control over workers representative committees.

Paradoxically, while Oman has been heavily accused by different U.S. interest groups for not respecting the ILO standards, the latter has not imposed such heavy criticism[29]. In an Interview with the U.S.-Arab Tradeline (2006, p.3), the Minister of the MOCI defended Oman's position and strongly confirmed Oman's commitments to ILO standards including the right to collective bargaining and legalised trade unions. The Minister emphasised that *there are no issues of child labor or forced labor in Oman*. The Minister added that the AFL-CIO testimony relied on an old version of the 1970 Oman's Labour Laws, without considering the substantial changes that Oman made when it adopted its new labour law in 2003. The Minister emphasised that two Ministries – Ministry of Manpower and Ministry of Social Development – were created in 2002 to specifically observe labour management relations and in 2003 Oman adopted its first comprehensive labour law that grants workers the right of association and allows them to pursue labour disputes in court. The Minister further confirmed that the 2003 "Labor Law" eliminated any prohibitions on the right to strikes; emphasising that *strikes are now taking place freely in Oman*. But, how are labour standards addressed in the FTA? What would happen if Oman, for instance, was accused of violating these standards? The answers to these questions are discussed below.

5.5.3. Main provisions of the FTA

Chapter sixteen is the relevant chapter that stipulates the FTA regulations on labour issues. It consists of seven detailed articles that impose strong disciplinary commitments on both parties to abide by international labour rights. The chapter can be divided into five main areas; re-affirmation of commitments, procedural issues, institutional arrangements, and dispute settlement.

5.5.3.1. Re-affirmation of commitments

Both parties reaffirm, according to Article 16.1.1, their obligations as members to the ILO and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (DFPRW). The latter was adopted in 1998 and obliges all member countries to

[29] More analysis on Oman's adherence to the ILO standards is provided below.

respect and promote principles and rights of workers in four categories known as "core international labour standards", namely; freedom of association and collective bargaining, the elimination of; forced or compulsory labour, child labour, and discrimination in respect of employment and occupation (ILO, 2008a,b). These international labour standards are further stipulated in Article 16.7 of the FTA which obliges the two parties to protect them in their domestic laws. Article 16.1.2 recognises the right of each party to establish its own domestic labour standards but they must be consistent with those of the ILO. However, there are four important considerations that can be raised in regard to this area of re-affirmations and commitments.

Firstly, Oman has been an official active member to the ILO since 1994. Besides its commitments to the DFPRW that are clearly incorporated in its 2003 Labor Law and other executive regulations, Oman endorsed pact no.29 on compulsory labour and pact no.182 on banning the worst types of child labour. The Ministry of Manpower regularly reports to the ILO on Oman's commitments to the content of the two pacts. The Ministry also prepares annual reports on Oman's commitment to the content of the declaration of labour principles and basic rights and other pacts (Ministry of Manpower, 2007). These reports are subject to the observations and verifications of the Committee of Experts (COE) of the ILO, which can question the context of the reports (ILO, 2008a,b). Hence, all these activities have taken place without the need for an FTA with the U.S. to dictate them.

The most notable observations made by the COE on Oman's adherence to labour standards was its concern about the exploitation of children under 18 years of age involved in camel racing and the impact of that on their health and safety. The Government of Oman replied that camel races are an inherited traditional sport, emphasising that it is a sport like many other sports children exercise such as football and swimming. Only Omani children are involved in this sport and it does not involve hiring workers in return of wages; thus these jockeys are not child workers (ILO, 2005). Despite that, the Government responded positively to the request of the COE and issued "Regulations on Holding and Organizing Camel Races in the Sultanate of Oman" which condition that the minimum age for taking part in camel races is 18 years, which will be reached progressively starting from a minimum age of 14 years, over four years beginning from the 2005-06 (ILO, 2008a,b).[30] The Government has also adopted a number of wide-ranging measures aimed at protecting the health and safety of camel jockeys below 18 years of age such

[30] This regulation appears to be in line with the ILO Minimum Age Convention no.138 which conditions the general minimum age should not be less than the age for completing compulsory schooling, which is the year of 18 in Oman, but the convention offers some flexibility for developing nations by allowing them to set a minimum age of 14 until they are able to comply fully with the convention (ILO, 2008a,b).

as wearing helmets, special belts to prevent falls, and wind-proof clothing (ILO, 2007). All these interactions with the ILO and Oman's adherence to the international labour standards have been taking place far before the U.S. FTA negotiations and without being linked to trade agreements. However, the reality that Oman has to live up with is that labour standards are now linked to its trade and investment activities with the U.S. These standards are part and parcel of the whole FTA. A failure to apply them will be subject to the dispute settlement mechanism of the Agreement.

Secondly, Article 16.2.2 states that each party recognises that *it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws.* This Article seems to reflect the previously-mentioned concerns of the U.S. companies that they would be displaced at competitive disadvantages because they operate under high and costly labour standards requirements in comparison with low standards adopted by developing countries (Anderson, 1998). But, whereas the latter managed to challenge such claim at the MTS and argue that differences in standards are natural legitimate comparative advantages (Stern and Terrell, 2003), Oman has not been able to do so in the FTA. Whereas business companies in developing countries can enjoy comparative advantages of cheap labour, Omani businesses will have to function under the strict provisions of labour standards of the FTA. Thirdly, among the internationally recognised labour standards that are emphasised in Article 16.7.e[31], is the right of *acceptable conditions of work with respect to minimum wage, hours of work, and occupational safety and health.* This particular point was very contentious at the multilateral negotiations. Developing countries solidly refused any kind of restrictions on minimum wages or working hours, as these are ones of their biggest economic advantages. Any restrictions could affect the level of production and development of their economies (Tay, 2002). The U.S., in an attempt to gain some support for its proposal of incorporating labour standards in the WTO legal system, promised that it would not include the right of minimum wage or restriction of working hours in its proposals (Hoekman and Kostecki, 2001). This was clearly expressed by Charlene Barshefsky; the then Acting USTR when she said at the time of the Singapore MC negotiations (1996), that: *[w]e are not proposing an agreement on minimum wages, changes that could take away the comparative advantage of low-wage producers, or the use of protectionist measures to enforce labour standards* (Barshefsky, 1996). The Singapore MC patently confirms that the economic advantage of low-wage countries should not be questioned (WTO, 1996).

[31] Internationally recognised labour standards as stated in Article 16.7 are; the right of association, the right to organise and bargain collectively, a prohibition of the use of any form of forced or compulsory labour, labour protections for children and young people, and acceptable conditions of work with respect to minimum wage, hours of work, and occupational safety and health.

However, this U.S. flexibility was absent in the FTA negotiations, and Oman is obliged to incorporate in its domestic laws *acceptable conditions of work with respect to minimum wage, hours of work and occupational safety and health*. But, the term "*acceptable conditions*" is quite ambiguous, as what can be seen as *acceptable conditions* for Oman might not be regarded so by the U.S. The extent to which such measures will affect the overall performance of the Omani economy will remain to be seen in the future.[32] Fourthly, freedom of association and collective bargaining as set out in the ILO Conventions no.87 and 98 do not mention the right to strike. But, according to the U.S Department of Labor (2008), *a long tradition of ILO jurisprudence has established the right to strike as an essential component of collective bargaining*. This reflects the U.S. strong conviction of including the right to strike as part and parcel of international labour standards. Initially, when Oman's 2003 Labour Law was issued under the Royal Decree 35/2003, it did not contain any provision that permitted strikes. According to Article (107) of this Law, a worker who has a complaint shall first *follow the procedure laid down by the employer*. But, if this procedure has not resulted *in redressal of the worker's grievance*, he or she may resort to the *relevant directorate in order to make endeavour to reach a settlement for the dispute between him and the employer*. However, as part of the FTA requirements, Oman had to modify this Article to allow for "*peaceful strikes*", as per Royal Decree no.74/2006 issued on July 8, 2006.[33]

5.5.3.2. Procedural issues

Each party is obliged to provide any interested person appropriate access to fair, equitable, and transparent tribunals and the right to support or defend his/her position (Article 16.3.2). Tribunals can be *administrative, quasi-judicial, judicial, or labor tribunals* (Article 16.3.1). Each party is obliged to ensure that proceedings before such tribunals are equitable and transparent and must not entail *unreasonable fees or time limits or unwarranted delays* (Article 16.3.2.d). However, the term *unreasonable* is not specified. What can be regarded as a reasonable time or fees for Oman's proceedings might be seen as unreasonable by U.S. tribunals. Also, both parties, according to Article 16.3.2.b, are obliged to open to the public *any hearings in such proceedings*. Hence, as Oman has been heavily criticised by U.S. NGOs, Oman must prepare itself to accommodate these groups to observe and attend the hearings of its proceedings that investigate labour issues. Although Article 16.3.2.b provides an exception of not opening hearings to the

[32] Although these measures can be useful for workers in Oman, they would likely incur additional costs on businesses and private companies to what has already been perceived as expensive Omanisation policy.
[33] Perhaps, it is this provision that the Minister of Commerce and Industry referred to in his interview with the U.S.-Arab Tradeline, as explored above.

public if it is found that the *administration of justice...requires [so]*, this is still an "exception" and will be difficult to be used in every single hearing.

Final decisions of the proceedings of tribunals must be made in writing, justified by reasons on which the decisions have been based, and based on information or evidence provided by the parties to the case. Decisions must also be made available without undue delay to the parties to the proceedings and to the public if it is consistent with the domestic law (Article 16.3.3). The parties to the case shall be provided with the right to seek a review or correction of the final decisions via partial and independent tribunals (Article 16.3.4). Although these provisions seem to be designed to ensure that proceedings are carried out in a fair manner, incorporating them in the FTA make them forcible "laws" and subject to its dispute settlement.

5.5.3.3. Institutional arrangements: continuous observations

The Joint Committee is tasked with reviewing activities related to the operation of chapter sixteen of the FTA (Article 16.4). The JC *shall, at the request of either Party, establish a Subcommittee on Labor Affairs* (SLA). This implies that if the U.S. makes such a request, Oman cannot disagree. The SLA will comprise of officials of relevant governmental bodies from each party and shall meet at any suitable time to discuss matters related to the operation of chapter sixteen. The SLA meetings shall include a *session where members of the SLA have an opportunity to meet with the public to discuss matters related to the operation of the Chapter* (Article 16.4.1). This implies that the Government and businesses of Oman will find themselves under continuous supervisory pressures from the U.S., as the latter will be able, through the SLA, to consistently investigate the working conditions in Oman. This pressure will likely increase further through the so-called Labor Corporation Mechanism (LCM) that is annexed to chapter sixteen and provides outlines for future cooperation between Oman and the U.S. on how to improve labour standards and working conditions of workers (Article 16.5).

Not only that, each party is required, as per Article 16.4.2, to designate an office within its labour ministry that shall serve as a contact point with the other party and with the public[34] for the purposes of implementing chapter sixteen. Information and feed back the contact point receives from the public shall be made *available to the other Party and, as appropriate, to the public* (Article 16.4.2). This implies that Oman is obliged to report to the U.S. about workers' views and concerns about their conditions in the Omani market. Hence, the reports of the contact point will act as an additional channel through which the U.S. will be able to verify the Omani labour

[34] Although the word "public" is not defined, it is presumed to entail all types of workers and interested groups in both Oman and the U.S.

markets. Moreover, Oman is obliged to prepare joint reports with the U.S. on matters related to the implementation of chapter sixteen. The reports shall be made public (Article 16.4.5). Hence, through all these institutional arrangements, the U.S. will be able to consistently check and verify workers' conditions in Oman; a pressure that other developing countries have successfully managed to avoid at the MTS. This pressure is even more apparent when considering the provisions of the dispute settlement in cases that involve labour standards.

5.5.3.4. Dispute settlement on labour issues

Article 16.2.1.a commits each party to *effectively enforce its labor laws* to be consistent with the international labour rights that are outlined in Article 16.7. A failure to carry out this obligation makes the failing party subject to the rules and provisions of the dispute settlement of the FTA. This ultimately implies that the FTA dispute settlement acts as a supreme legal tool over the domestic labour laws of Oman. However, there are substantial differences in certain procedures between disputes that involve labour/environmental standards and those of other cases, as is demonstrated in the analysis below.

5.5.3.4.1. Consultations: different long processes determined by the complaining party

Consultations procedures on labour standards are designed in a way that their length of time can be prolonged and determined according to the wishes of the complaining party, which is expected to be the U.S. in most cases. The complaining party may firstly request consultations with the other party as specified in Article 16.6 which states that either party *may request consultations with the other Party regarding any matter arising under* chapter sixteen. Hence, Oman must prepare itself to enter into consultations with the U.S. at any time the U.S. requests so and on any issue relating to Oman's implementation of labour standards. The request shall be made in writing to the other party's contact point and consultations shall commence within 30 days after the delivery of the request. This type of consultations adds another verification channel for the U.S. to check the implementation of labour standards in Oman even if there were no breaches of the Agreement.

However, Article 16.6 does not specify how long the consultations shall last, which is a clear loophole in the Agreement and implies that the complaining party can drag the consultations for as long as it wishes. If consultations fail to resolve the matter, either party may request that the SLA, which consists of officials from relevant governmental bodies that deal with labour issues in each party, to be convened to consider the matter. Hence, the SLA would act as a second form of consultations on labour issues. The SLA shall convene within 30 days after the delivery of the

request, unless the parties agree otherwise, and shall endavour to resolve the matter "*expeditiously*", even by resorting to mediatory procedures such as good offices, conciliation, or mediations. But, the term "*expeditiously*" is vague and can be subject to different interpretation. However, if these two types of consultations stipulated in Article 16.6 were exhausted without resolving the matter, the complaining party may shift to consultations under the dispute settlement mechanism outlined in chapter twenty of the FTA. This step clearly means that the matter has formally become subject to the dispute settlement mechanism of the Agreement. The parties have a period of sixty days to resolve the issue before referring the matter to the Joint Committee (Article 20.6). As the earlier analysis has demonstrated, the JC is also another form of consultations that lasts for additional sixty days before referring the matter to the panel (Article 20.7). Hence, all the four forms of consultations mentioned above will be very strenuous and exhausting for a weak country such as Oman, whose legal and negotiating experience on trade issues is very limited in comparison with the U.S.

But, does the complaining party have to follow each of these forms consecutively? What would happen if the party shifted to dispute settlement procedures of chapter twenty while it was still involved in consultations or the SLA under Article 16.6? The answers to these questions are addressed in Article 16.6.4 which requires that all consultations efforts to resolve the matter under Article 16.6 shall stop, and the dispute settlement procedures of chapter twenty will apply. Hence, it can be realised that Article 16.6.4 is designed in a way to provide the complaining party with the flexibility to pursue different types of consultations at any time and shift from one type of consultations to another. The party complained against is consistently placed in a difficult and uncertain situation as the complaining party may, at any time, drop on-going consultations under chapter sixteen, and seek the hard lines of the dispute settlement of chapter twenty. The party complained against will only have to go along with the wishes of the complaining party.

5.5.3.4.2 Monetary assessment: stricter measures than in non-labour/environmental disputes

The situation becomes even more complicated for the party complained against if the dispute settlement reaches the stage of a panel. If the panel finds that the party complained against has failed to carry out its domestic labour laws *effectively*, as required by Article 16.2.1.a, this party will not be given any opportunity to negotiate on compensation or suspension of benefits, as is practised in other types of disputes (Article 20.11). Instead, according to Article 20.12, which specifically applies to labour and environmental standards, if the parties are unable to reach a resolution within 45 days of receiving the final report, the complaining party *may at any time thereafter request that the panel to be reconvened to impose an annual monetary assessment on*

the other Party. The latter will have to pay the penalty set out by the reconvened panel (Article 20.12). Hence, the panel in labour/environmental disputes is reconvened upon the request of the complaining party for the purpose of imposing annual monetary assessment (penalty), but in other types of cases the panel is reconvened upon the request of the party complained against to look into its concern about the level of suspension of benefits which it regards as *manifestly excessive*, or that it has eliminated the non-conformity or the nullification or impairment (Article 20.11.3). These are strict measures that Oman must accommodate itself to.

Even the ways of paying the penalty in labour/environmental disputes as specified in Article 20.12 are much stricter than in other types of cases. Within 90 days of its reconvention, the panel shall determine the amount of the monetary assessment in U.S. dollar, which shall not exceed $15 million annually (Article 20.12.2). Immediately, on the same day on which the panel decides about the amount of the assessment, the complaining party may provide a written notice to the other party demanding the payment, which shall begin 60 days after the provision of the notice (Article 20.10.3). Hence, when comparing these measures with those provided in Article 20.11 for non-labour/environmental disputes, it appears that in the latter disputes it is the party complained against which gives notice about its intension to pay the assessment not the complaining party as in labour/environmental disputes. Also, whereas in the latter the demand for the payments can be made immediately, even within the same day of the panel decision, in other types of disputes there is no specific time allocated for the party complained against to make the notice of the payment. Also, the amount of monetary assessment which is set, according to Article 20.12, not to exceed $15 million annually, is very high. Obviously, the total penalty can be much higher than this amount in one dispute, but the payment is divided in different installment which shall not exceed $15 million annually. These are serious implications that Oman must prepare itself for.

According to Article 20.12.4, the amount of the assessment shall be paid into a special fund established by the JC. The JC shall administer how the assessment will be expended in a way to improve and enforce labour/environment standards in the territory of the party complained against. In determining how monies paid into the fund are expended, the JC *shall consider the views of interested persons in each Party's territory.* Hence, there are some significant considerations that are important to highlight in respect of how the monetary assessment is determined and administered.

Firstly, according to Article 20.12.2, when determining the amount of assessment, the panel shall base its decision on certain accounts such as the extent of *the bilateral trade effects of the Party's failure to effectively enforce the relevant law* and the pervasiveness and duration of the party's failure to effectively enforce the relevant law.[35] These accounts imply that dispute settlement measures on labour/environmental issues can be used as protective instruments by the complaining party. For instance, the U.S. can claim that its textiles businesses have been placed at disadvantage competitiveness due to Oman's failure of not enforcing its domestic labour law as internationally required. As a result, the U.S. would seek to impose monetary penalty on Oman so that its competitiveness would be reduced, which would then allow the U.S. textiles to regain a stronger competitive position. Secondly, in determining how the monetary assessment is expended, the JC is obliged to *consider the views of interested persons in each Party's territory* (Article 20.10.4). This implies that any interested persons or groups in both parties will have to be consulted. If Oman was the offending party to pay the assessment, interest groups or businesses in the U.S. would have to be consulted about how the money would be expended. This is another powerful tool in favour of the U.S. NGOs that have for long accused Oman for not effectively enforcing labor standards. All these implications are avoided in the WTO.

Thirdly, when comparing these measures with those provided in Article 20.11.6, it can be realised that in non-labour/environmental disputes, the role of the JC is voluntary, as it has the choice to decide whether or not, the amount to be paid into a fund to be used for further trade facilitation between the parties.[36] But, in labour/environmental disputes, the role of the JC is obligatory as it must establish a fund into which the amount must be paid, and the amount must be used to improve labour and environmental standards in the party complained against. Ironically, this implies that if the party complained against, which is likely to be Oman in most cases, does not enforce the high labour and environmental standards, it will be forced to pay for it.

But, what if the party complained against failed to pay the amount? Articles 20.12.5 and 20.12.6 give the complaining party the authority to resort to different means to obtain the amount of the assessment. If the party complained against fails to pay the monetary assessment, the complaining party shall, before resorting to any measure, seek to obtain the funds from the

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[35] Other accounts for the panel determination of the penalty are; a) the reasons for the party's failure to effectively enforce the relevant law, b) the level of enforcement that could reasonably be expected of the party given its resource constraints, c) the efforts made by the party to begin remedying the non-enforcement after the final report of the panel, and d) any other relevant factors (Article 20.12.2).

[36] Article 20.11.6 states that *Where the circumstances warrant, the Joint Committee may decide that an assessment shall be paid into fund established by the Joint Committee and expended at the direction of the Joint Committee for appropriate initiatives to facilitate trade between the Parties.*

escrow account that the former should have created to ensure any payment of assessment against it. However, if the complaining party cannot obtain the funds from the other party's escrow account within 30 days of the date on which payment is due, or if the other party has not created an escrow account, the complaining party may take other appropriate steps to collect the assessment. One of these steps can be suspending tariff benefits under the FTA as necessary to collect the assessment. These measures are applicable to all disputes, including disputes on labour issues, where suspensions of benefits would be the final choice for the complaining party, if payment of monetary assessment is not achieved. However, in non-labour/environmental disputes, the party complained against is given an early chance to object to the level of suspension if it feels it is *manifestly excessive* (Article 20.11.3). But, in labour/environmental disputes such a possibility is not provided at all. If the party complained against fails to pay the monetary assessment, it has to accept the level of suspension that the complaining party decides as necessary to collect the assessment, or even other types of measures that the complaining party chooses (Article 20.12.6). There is no opportunity provided for the party complained against to object to the level of suspension of benefits or other measures taken by the complaining party. In other words, unless the party complained against pays the penalty as decided by the panel, it would have to accept the level of suspensions of benefits taken by the complaining party, or any other measures, no matter how oppressive it is. Appendix (5.1) provides a comparative analysis between dispute settlement procedures that have to be taken in labour/environmental issues and other types of disputes under the FTA.

5.5.4. Policy implications

The analysis of this section has clearly demonstrated that Oman faces better policy choices under the WTO in regards to labour standards than the FTA. Under the WTO, developing countries successfully managed to stop the U.S. efforts to incorporate labour standards into the multilateral trading system. Developing countries managed to separate the work of the WTO as an organisation governing trade issues from the responsibility of the ILO that supervises the enforcement of international labour standards. Oman has been a member to the ILO since 1994 and has been recognised as an active member of the organisation. Oman did not need an FTA with the U.S. to implement internationally recognised labour standards. At the time of the FTA negotiations, Oman was subject to heavy criticisms from U.S. Democrats and NGOs for what was believed to be poor implementation of international standards of labour. Such criticisms did not occur at the MTS level, as developing countries collectively rejected the U.S. proposals for linking labour issues to trade.

But, by incorporating labour standards as part of the FTA, these standards are now linked to Oman's trading activities with the U.S. If Oman is regarded as not effectively enforcing these standards, benefits of free trade in other sectors can be affected. Oman would no longer enjoy any comparative advantages of cheap labour and minimum wages that other developing countries may enjoy. Through the institutional arrangements of chapter sixteen of the FTA, Oman is put under continuous scrutiny and verifications from the U.S. on its implementation of labour standards. Consultations and dispute settlement procedures on labour standards are designed in a way that allows the complaining party, which is most likely to be the U.S., more power and control over the other party. The latter is given little chance to maneuver and will have to go along with the wishes of the complaining party. Obliging the JC to consult interested persons in both countries about how to expend the monetary assessment (the penalty), implies that U.S. NGOs will have to be part of the consultations. Oman must prepare itself for all these implications; a challenge whose impact on Oman's trading activities remains to be seen in the future.

5.6. Conclusion

The textual analysis of this chapter has clearly demonstrated that Oman is better positioned in the WTO than the FTA. The WTO provides Oman with more flexible and considerate arrangements than the FTA. In market access for goods, Oman's negotiating achievements of securing high tariffs rates for some economically, socially, and religiously products are lost in the FTA. There is no bound level that Oman could resort to, to increase tariffs on important and sensitive products such as fish, oil, bananas, pork, cigarettes, and alcohol. Even the safeguard measures provided in the WTO are more flexible and considerate than those of the FTA.

The analysis has further demonstrated that Oman has managed to refrain from issuing its own rules of origin for non-preferential trade. The only document issued in this respect has been the Ministerial Decree no. 21/2000 which only acts as a guiding document for those who would like to apply for a certificate of the origin of their products. As multilateral negotiations on rules of origin are still continuing, Oman has the opportunity to address its concerns and interests by cooperating with other developing countries of similar interests. However, such an opportunity is not available under the FTA, where Oman must abide by the very strict U.S. designed rules of origin. This means that Oman will not be able to benefit from the free entry to the U.S. market for its goods, unless Oman fulfils the rules of origin of the FTA. Regional cumulation might seem helpful for Oman as it would be able to import raw materials from other U.S.-FTAs partners and process them as Omani originating goods to fulfill the required 35 percent value

addition. However, this opportunity would depend very much on the future success of the MEFTA project. But for the time being, Oman will have to live up with the reality that its customs authorities will have to function under different types of rules of origin; the FTA, GCC, and GAFTA. With more FTAs signed between Oman and other countries such as the currently negotiated FTA between the GCC and the EU, the situation will become even more complicated for Oman. These FTAs will have their own rules of origin. Also, once the multilateral negotiations on rules of origin are concluded, Oman will have to abide by them.

The analysis on dispute settlement has clearly demonstrated that the DSU is much clearer, more comprehensible, and comprehensive than the dispute settlement mechanism of the FTA. The latter contains many loopholes and seems to be designed to serve the interests of the complaining party, which is likely to be the U.S. in most cases[37], more than the party complained against. The opportunity provided in the WTO for the party complained against to appeal against panel's findings does not exit in the FTA. Also, unlike the DSU, the party complained against under the FTA is given very minimum scope to object to the suspension level of benefits practised by the complaining party. While the DSU incorporates some special considerations for developing countries, which can be further improved in the current Doha negotiations, the FTA deals with Oman on equal footing with the U.S. While Oman can receive special legal and technical assistance on dispute settlement at the MTS level, no similar provisions on such assistance are found in the FTA.

The analysis on labour standards has clearly demonstrated how developing countries managed to solidly oppose the U.S. lobbies to incorporate labour standards into the WTO legal texts. Thus, Oman's trade activities with WTO members are not linked to labour standards. Oman's adherence to international labour standards is administered and supervised by the ILO. However, the incorporation of labour standards in the FTA has some serious implications for Oman. Oman's labour market will be under continuous scrutiny from different U.S. institutions and organisations. Oman can be deprived from the benefit of free trade in some sectors by claiming that it has not implemented labour standards effectively.

Such an accusation has already been made against Oman by different NGOs and U.S. democrats and would possibly continue in the future. Perhaps the very latest example for the U.S.

[37] This is due to the size of the U.S. economy, its legal expertise capacity on trade issues, and big experience on trade dispute. Since the establishment of the WTO in 1995, the U.S. has been involved in 90 cases of dispute as a complainant, 99 cases as a respondent, and 73 cases as a third party (WTO, 2008h), while Oman has no record whatsoever in dispute settlement (WTO, 2008i).

accusations against Oman in regard to labour issues, until the time of writing this thesis, is the U.S. State Department Trafficking in Persons Report issued on June 4, 2008. The report lists Oman in Tier three which includes countries that have not put enough efforts to improve the situations of workers and fight human trafficking. The report describes the situations of some expatriate workers in Oman to suffer from *conditions of involuntary servitude, such as withholding of passports and other restrictions on movement, non-payment of wages, long working hours without food or rest, threats, and physical or sexual abuse.* The report accused the Government of Oman of not fully complying *with the minimum standards for the elimination of trafficking and of not making significant efforts to do so.* The report further stipulates that Oman *failed to report any law enforcement activities to prosecute and punish trafficking offences under existing legislation* (The U.S. Department of States, Trafficking in Persons Report, 2008).

The Government of Oman has strongly rejected these accusations. Oman urged the U.S. to revise the report to reflect the true situations of workers in Oman (Ministry of Foreign Affairs, 2008). On November 24, 2008, the Royal Decree no.126/2008 was issued on promulgation of Human Trafficking Combating Law (Ministry of Foreign Affairs, 2008). If Oman continued to be accused of not implementing labour standards effectively, after the implementation of the FTA, it could be made subject to the dispute settlement which is much stricter than disputes on other non-labour/environmental cases. As the party complained against, Oman would have very little scope to maneuver to defend its position. Oman might end up paying a high financial penalty of $15 million annually if it was found not abiding by labour standards.

Given the very detailed and comprehensive nature of the above textual analysis, the chapter now turns to re-produce this analysis in a simpler and more rigid codified manner. The objective is to make the reader better acquainted with the main findings of the textual analysis on the above four areas in an easier and more simplified way. This codification analysis is based on common categories, each representing a particular area and broken into four other smaller categories, as is explored in the five tables below.

5.7. Codification analysis

Table 5.3: Codified analysis of official documents on market access of goods

Category		Market access of goods: tariff and non-tariff measures under the WTO and the FTA
Focused coding		
Multilateral WTO approach	- Oman has managed to bind high customs imports duties on many agriculture and non-agriculture products at 15% or over, which exceed the actually applied 5%. - In some other important and sensitive products, tariffs are bound at much higher rates; cement (15%), fish, oil (20%), eggs, milk, cream (75%), dates, bananas (100%), tobacco (150%), pork and alcohol (200%).	
Bilateral FTA approach	- Oman must not increase existing tariffs and must progressively eliminate tariffs on their goods to zero, according to their Schedules of Annex 2-B.	
Policy implications for Oman	**Multilateral approach**	- Oman can at any time increase tariffs up to the bound levels which are in most cases higher than the actually applied 5% and can reach 200% in some cases. - This flexibility enables Oman to apply tariffs on socially and religiously sensitive products such as alcohol, pork related meats, or tobacco. - Oman can address its agricultural and non-agricultural concerns in the on-going multilateral negotiations, as a developing and as a food importing country.
	Bilateral approach	- Most of the bound tariffs achieved under the WTO will have to be reduced to zero under the FTA. - Omani products will have to compete on equal ground with the U.S. exports. - Oman can no longer provide protection for its local farmers nor can it make religiously or socially unacceptable products such as pork or alcohol difficult to enter Oman. - Oman will also loose substantial amount of its budget income that may be achieved, as under the WTO, in forms of customs duties.
Theme	Oman's flexibility to raise tariffs under the WTO is lost under the FTA. Omani products must compete equally with the U.S. products.	

Source: Compiled by the author (2009).

Table 5.4: Codified analysis of official documents on safeguard measures

Category		**Raising tariffs as a safeguard measure under the WTO and the FTA**
Focused coding		
Multilateral WTO approach	-	Under the Agreement on Safeguards, Oman can increase tariffs at higher rates than the bound rates stated in its schedule, if a product suffers injury from imports.
Bilateral FTA approach	-	Under chapter eight, Oman can suspend reduction or elimination of a customs duty on a particular good and raise it as a safeguard measure if it is found that the good suffers from serious damages as a result of reduction or elimination of a customs duty.
Policy implications for Oman	**Multilateral approach**	- The Agreement on Safeguards acts as a safety net for Oman in cases of injury or damage caused to its local products as a result of imports. - The maximum duration of any safeguard measure is four years, which can be extended if it is found necessary to prevent or remedy serious injury. - The initial period of the applications of a safeguard measure in addition to any extension can reach up to eight years. - In critical circumstances, where a delay in taking a safeguard measure could cause damages that are difficult to repair, the tariff can be increased to 200 days.
	Bilateral approach	- Suspension of tariffs reduction must not exceed three years, whereas under the WTO it is four years and can even be extended further if necessary to eight years. - Unlike the WTO, the FTA does not contain provisions in regard to critical circumstances. - Safeguard measures under the FTA can only be applied once on a particular good, but under the AOS safeguard can be re-applied on the same good provided that a period equals to the duration of the original safeguard has elapsed and the period of non-application is at least two years.
Theme	Although Oman can increase tariffs under the two trading approaches as "safeguard" measures, these measures are more flexible under the WTO than the FTA.	

Source: Compiled by the author (2009).

Table 5.5: Codified analysis of official documents on rules of origin

Category		Rules of origin (ROO) under the WTO and the FTA
Focused coding		
Multilateral WTO approach		- The Agreement on Rules of Origin temporary administers ROO between members and allows them to continue implementing their own ROO until the work on the Harmonisation Work Programme (HWP) is finalised and a final comprehensive agreement is reached. - Each member has to notify its ROO to the WTO Secretariat. - Oman has not incorporated specific domestic ROO for non-preferential trade. - Members are prohibited from using their ROO as protective measures to restrict imports from other members.
Bilateral FTA approach		- Chapter four outlines strict U.S. designed ROO for non-textiles goods. (Textiles ROO are separately dealt with in chapter three). - An originating good must be directly imported from the territory of one party to another and must be wholly grown, produced, or manufactured in one or both of the two parties. - Besides the above conditions, an originating good must undergo a substantial transformation with at least 35% value added. - Any originating good or material produced in the territory of one of the parties and used in the production of a good by the other party shall be considered as an originating good of the latter party. This process is called "cumulation". - Oman and the U.S. can, within six months of the date of entry into force of the FTA, agree to consider developing regional accumulation regime covering the U.S. and Middle Eastern countries that have FTAs with the U.S. - If such an agreement was reached, goods originated in Morocco, Jordan, Israel, and Bahrain could be regarded as Omani originating goods. - If an importer did not make a claim for Preferential Tariff Treatment (PTT) at the time of importation, the importer still, within no more than one year after the date of importation, has the right to make such a claim and apply for a refund of any excess duties paid.
Policy implications for Oman	**Multilateral approach**	- As the work on the HWP is continuing, Oman still has the opportunity to make sure its interests are properly addressed. - Once the HWP is finalised, Oman will have to abide by the new multilateral agreement on non-preferential ROO. - Oman will apply the same ROO to all WTO members without any discrimination, which will be an easier task for the customs authority than applying different ROO to different countries. - Oman can seek the help of the Committee on Rules of Origin and the Technical Committee, which both administer the HWP, to understand and examine other members' ROO.
	Bilateral approach	- Oman's trade will have to function under different complicated U.S. designed ROO based on discrimination. - The different separate ROO for textiles makes matter more complex for Oman. - Oman's customs authorities have to function under different complicated and contradictory arrangements of ROO; the FTA, the GCC, the GAFTA, and those of the WTO once a final agreement is reached. - "Cumulation" may not benefit Oman due to its lack of manufacturing capacity and the high transport costs between Oman and the U.S.

		- "Regional cumulation" is not automatic and depends on the future of the MEFTA project. - The PTT obligations imply that Oman's customs authorities have to deal with claims for refund on imports that already entered the country some time ago and perhaps had been consumed and sold out. - These PTT obligations are not incorporated in any other FTA under the MEFTA project, which means that Oman is the only MEFTA country obliged to meet these additional conditions.
Theme	Whereas Oman under the WTO has the opportunity to design its own domestic ROO for non-preferential trade and participate in the on-going negotiations, Oman must abide by the very complicated ROO of the FTA.	

Source: Compiled by the author (2009).

Table 5.6: Codified analysis of official documents on dispute settlement

Category		**Dispute settlement under the WTO and the FTA**
Focused coding		
Multilateral WTO approach		- Dispute settlement consists of clearly defined stages: consultations, establishment of a panel, panel's report, appeal against panel's report, implementation of the panel/AB final report, compensation, and suspension of benefits. - Dispute Settlement Body (DSB) supervises the whole process of dispute settlements. - Only governments have the legal standing to bring cases to the WTO. - A member can resort to DSP if it considers that any benefit accruing to it is being nullified or impaired as a result of the failure of another member to implement its obligations, or its application to any measure. - Dispute process could take 345 days in cases where no appeal is made and that the panel does not exceed the 6 month period allocated for it to present its final report to the DSB. - But, if an appeal is made and both the panel and Appellate Body do not exceed the 6 month and 90 day periods allocated for them respectively to present their reports, the dispute process could take 435 days.
Bilateral FTA approach		- Under chapter 20, only governments can be parties to a dispute, but under chapter 10 (investment) private investors can be a direct party to a dispute against the government of the other party. - The FTA does not provide the opportunity to appeal against panel's report. - The FTA obliges the parties to publicise the procedures of the dispute settlement and consult other interested groups about the dispute. - Dispute process could take maximum 470 days, which is longer than under the DSU although the FTA does not allow appealing the panel's report.
Policy implications for Oman	**Multilateral approach**	- Oman can rely on the DSU in its trade disputes with other WTO members because the DSU is a robust, well-tested, rule-oriented, comprehensible, and comprehensive system. - Oman can learn from the cases of dispute experiences of other members. - As a member of the DSB, Oman can participate in the DSB's authority of establishing panels and observing implementation of findings; and thus gain important experience on trade dispute settlement without having to be a party to a dispute. - In its disputes, Oman can build a coalition with other members of similar concerns as the DSU allows the participation of third parties in a dispute. But, this opportunity is not available under the FTA. - Oman can appeal against the panel report, via a separate body; the Appellate Body, but this opportunity is not available under the FTA. - Oman should not be concerned about the neutrality and impartiality of panels' members because the DSU conditions that all panel members that look into a dispute must not be nationals of either parties to the dispute, but this point is not clear under the FTA. - Oman can resort to other flexible means of pursuing its trade disputes such as good offices, conciliation and mediation provided by the Director-General of the WTO; a process which can be taken in parallel with the panel's hearing, but the FTA does not provide such alternatives. - Oman can benefit from the special provisions and assistance

		provided for developing countries, including the legal advice and assistance provided by the WTO Technical Co-operation Services, but such assistance is not available in the FTA. - Multilateral negotiations on the DSU are still continuing and Oman can unite with other developing countries in expressing their concerns, but such a chance is not available in the FTA.
	Bilateral approach	- The Government of Oman will have to unilaterally face the U.S. Government in trade disputes without being able to build coalitions with other third parties. - The Government of Oman may have to enter in a direct dispute against U.S. private businesses; a probability that can never take place under the WTO. - Dispute settlement of the FTA is still untested and contains many loopholes and ambiguous terms that can be of future disagreements between Oman and the U.S. - The U.S. could initiate a dispute against Oman without having to prove that Oman's action had resulted in the nullification or impairment of the benefits to the U.S. But, under the WTO, the nullification or impairment of the benefits of the complaining party must be the consequences of the actions taken by the party complained against in order for the dispute process to be initiated. - The FTA lacks the institutional authoritative element of the DSB. - Oman is responsible for the operation and costs of its office that must be established to provide administrative assistance to panels. But, no such financial burden exists in the WTO. On the contrary, Oman can even get free legal assistance in cases of disputes under the WTO. - Chapter 20 of the FTA serves the complaining party, which is likely to be the U.S. in most cases, more than the party complained against, which is likely to be Oman. - The complaining party can independently choose between different forums under which it can conduct the dispute; either under the FTA or the WTO, or other agreements without the need for the consent of the other party. - Even if the dispute was on issues related to the WTO agreements, the complaining party can shift the dispute to the FTA. - Oman must publicise details of its trade disputes and consult interests groups on such disputes. The U.S. has failed to introduce such measures in the WTO due to objections of developing countries, but Oman will have to bear the pressures under the FTA.
Theme	The multilateral WTO arrangements in regard of dispute settlement are more flexible, comprehensive, and comprehensible for Oman than the FTA. Oman faces better policy choices under the WTO than the FTA.	

Source: Compiled by the author (2009).

Table 5.7: Codified analysis of official documents on labour issues

Category		Labour standards under the WTO and the FTA
Focused coding		
Multilateral WTO approach		- At Singapore MC (1996), labour standards were dropped completely from the multilateral negotiations due to the refusal of developing countries to incorporate them in the WTO legal text. - The U.S. attempted to bring it back at Seattle MC (1999) but was unsuccessful.
Bilateral FTA approach		- Labour standards are part and parcel of the FTA (chapter 16). - Oman has been heavily criticised by many U.S. associations for improper implementations of labour standards, abusing workers, exploiting them, and depriving them from their basic rights.
Policy implications for Oman	**Multilateral approach**	- Oman's trading activities with WTO members are not linked to labour standards. - Oman's implementation of labour standards is dealt with via the ILO, not the WTO. - No criticism on Oman's implementation of labour standards was made at the WTO level.
	Bilateral approach	- Oman must abide by the U.S. designed strict rules of chapter 16. Thus, Oman's trading activities with the U.S. are directly linked to labour standards. - Oman is obliged to open hearings related to labour cases to the public. - Workers' conditions in Oman will be consistently checked and verified through the following institutional arrangements: - 1) the Subcommittee on Labor Affairs which comprises officials from both Oman and the U.S., - 2) Labor Corporation Mechanism that is annexed to chapter 16 and provides outlines for future cooperation between Oman and the U.S. on how to improve labour standards and working conditions of workers, - 3) the contact point designated in the Ministry of Manpower which shall provide the U.S. with all the information and feed back it receives on the working conditions of workers in Oman, - 4) joint reports that Oman has to prepare with the U.S. on matters related to the implementation of chapter 16, - 5) the special dispute settlement procedures designed specifically for labour issues. - Not abiding by the strict rules of the FTA on labour could make Oman subject to the dispute settlement of the FTA. - Dispute procedures on labour issues are stricter than other disputes in the FTA. Oman will not be given any opportunity to negotiate on compensation or suspension of benefits as is the case under other disputes. - Oman could end up paying a financial penalty that can reach $15 million annually. - Oman must prepare itself to respond to the continuos U.S. criticism in regard to labour standards.
Theme	Under the WTO, labour standards are not linked to Oman's trading activities, but they are under the FTA. Workers conditions will be under continuous scrutiny by the U.S. Oman may end up paying a financial penalty if it failed to carry out the obligations of chapter sixteen. Thus, the multilateral WTO arrangements are more flexible for Oman than the FTA. Oman faces better policy choices under the WTO than the FTA.	

Source: Compiled by the author (2009).

CHAPTER SIX

TEXTUAL AND CODIFICATION ANALYSES: TEXTILES AND CLOTHING, GOVERNMENT PROCUREMENT, TELECOMMUNICATIONS, AND INVESTMENT

6.1. Introduction

This chapter continues the textual and codification analyses of the official data collected on four areas: textiles and apparel, government procurement, telecommunications, and investment. As in the previous chapter, the study examines how each of these issues is addressed under the WTO in comparison with the FTA. It finds out that WTO arrangements are more flexible than those of the FTA and Oman faces better policy choices under the multilateral WTO approach than the bilateral FTA approach. The chapter begins with the textual analysis and then is followed by the codification analysis.

6.2. Textiles and apparel

6.2.1. Pre-WTO era: special multilateral arrangements outside the GATT

The textile industry in Oman has been affected, both positively and negatively, as a result of the very special global arrangements that governed international trade of this sector. In the 1950s and 1960s developing countries such as China and India, where labour is abundant and cheap materials are located, managed to make the production of textiles and clothing an entry point into the production of manufactured goods (Schott & Buurman, 1994). When textile exports of these developing countries started to gain ground in international markets, textile industries in developed countries found themselves outpaced by the competition. These industries lobbied their governments to put them back into business (Shafaeddin, 2000). Thus, developed countries such as the U.S., Canada, and Europe imposed special measures to protect their textiles and garment industries. These measures were driven by the desire to sustain employment of unskilled or semi-skilled workers. This is because textile industries were often regionally concentrated and accounted for a substantial share of total manufacturing employment in many countries of the Organisation for Economic Cooperation and Development (OECD) in the 1960s (Nordas, 2004).

As a result, exports of textiles from developing countries were restricted to certain quotas internationally agreed about under the framework of a special multilateral arrangement separated from the GATT 1947. This agreement was earlier called the Short-Term Arrangement on Cotton Textiles, introduced during the Dillon Round of GATT negotiations

(1961). The agreement evolved into a Long-Term Arrangement (1962) and then to the Multi-Fibre Agreement (MFA) (Landau, 2005). The MFA formed an international trade basis via which developed countries were able to restrict imports of textiles and garments from developing countries. The MFA was renewed for four successive periods (1974-1994)[1] and its discriminatory charter was progressively intensified. The member countries and products covered by it were considerably extended during the years. Initially limited only to cotton fabrics, over time the MFA incorporated products such as wool, man-made fibres, vegetable fibres, and silk blends. By 1994, the MFA had 45 signatories, including 31 developing countries[2] that exported textiles and clothing, and eight importers[3]. Exporting countries were subject to bilaterally agreed quantitative export restrictions or unilaterally imposed import restraints (Hoekman and Kostecki, 2001).

Oman's entry into the textile industry came about as a result of the quota system imposed on sub-continent countries by the MFA. Many manufacturing countries such as India, Bangladesh, Pakistan, and Sri Lanka reached the quota ceilings imposed by the MFA. They sought to establish textile factories in other countries such as Oman that had not yet been subject to the MFA's quota restrictions (Al-Mandhari, 2003). As a result, the textile industry in Oman was quick to flourish, exporting its products to northern markets of the U.S. and Europe. Omani manufacturers were able to improve their quality and productivity because of the repeated orders and the relatively low level of technology inputs required. The Omani textile industry became very active and played an important role in the industrial development of the country and its diversification process (Al-Mahrooqi, 2001). According to the commercial registration of the MOCI, the total number of textile factories in Oman until 1999 was 43, 33 of which were exporting their products overseas, particularly to the U.S. Textile exports in 2000 accounted for 7.3 percent of total Omani industrial products and 14.6 percent of total Omani non-oil exports (CBO, Annual Report for 2002, 2003). Moreover, the textile industry became a major employer for Omani citizens. According to official statistics from General Authority of Social Insurance, there were 1947 Omanis working in 33 factories (Al-Mahrooqi, 2001, p.28).

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[1] These were MFA (1974-77), MFAII (1978-81), MFAIII (1982-86), and MFA IV (1987-1994).

[2] Exporting countries in the MFA were Argentina, Bangladesh, Brazil, China, Colombia, Costa Rica, Czech Republic, Dominican Republic, Egypt, El Salvador, Fiji, Guatemala, Honduras, Hong Kong, Hungary, India, Indonesia, Jamaica, Kenya, Macao, Malaysia, Mexico, Oman, Pakistan, Panama, Peru, Philippines, Poland, Republic of Korea, Romania, Singapore, Slovakia, Slovenia, Sri Lanka, Thailand, Turkey and Uruguay (Hoekman & Kostecki, 2001, p.227).

[3] Importing countries in the MFA were Austria, Canada, the EU, Finland, Norway, the United States, Japan, and Switzerland (Hoekman & Kostecki, 2001, p.227).

However, as a result of increasing exports to the U.S. market, Oman's textile exports were also made subject to the MFA quota restrictions in 1993, beyond which Oman was not allowed to exceed. The practice of free trade in this area was restricted as it stood against the interests of the U.S. These restrictive measures are clearly shown in two letters dated September 15, 1993 and August 25, 1994, addressed from the Committee for the Implementation of Textiles Agreements in the U.S. to the Commissioner of Customs in the Department of the Treasury in Washington. These letters were issued in the wake of the textiles agreement between Oman and the U.S. (For more details see Appendices 6.1 and 6.2).

Nevertheless, given the small scale and modernity of their factories, more than 90 percent of Omani garment exports were produced to meet the allocated quota (Al-Mandhari, 2003). The MOCI restricted the use of quota to the already established producers. Entry of new factories was much restricted unless they had established a market outside the quota share. Thus, the quota constraints restricted the Omani textile industry from growing and prospering any further (MOCI, Report on the Performance of Omani Textile Industry, 2006a). The protectionist trade policy of the U.S. made it difficult for Oman to establish new factories in the textile industry. Ironically, however, Oman's garment industries would not have been able to flourish if the U.S. had not applied protectionist measures on other developing countries.

6.2.2. Post-WTO era: Agreement on Textiles and Clothing (ATC)

When the Uruguay Round was about to be launched, developing countries refused to participate unless their areas of interests, including textiles and clothing, were put on the agenda for trade liberalisation (Anderson, 2001). Being eager to open services markets of developing countries and apply strict rules on the protection of intellectual property, developed countries agreed to include textiles and clothing in the Uruguay negotiating agenda. Thus, the Agreement on Textiles and Clothing (ATC) was reached and made part of the WTO legal system as a result of which trade in textiles and clothing would be liberalised gradually over a ten-year period beginning from January 1, 1995. The ATC replaced the MFA and required developed countries to phase out quotas restrictions by 2005, when this sector would become fully integrated in the normal rules of WTO Agreements (Hutchinson, 1994). As a transitional instrument, the ATC meant that the fetters on imports imposed under the MFA before the end of 1994 would continue but were progressively liberalised until January 1, 2005. Liberalisation was carried out in four stages; 16 percent in 1995, 17 percent in 1998, 18 percent in 2002, and the remaining 49 percent in 2005 (WTO, Textiles, 2007j). The EU and the U.S. carefully chose to liberalise in the early stages categories where imports were either already unrestricted or were relatively capital intensive. Liberalisation of the sensitive items was left to the final stage

– the end of 2004 (Landau, 2005; Nordas, 2004). The Textiles Monitoring Body (TMB)[4] was provisionally established to supervise the implementation of the ATC and ensure that all measures taken under it were in conformity with its rules (WTO, 2007j). From 1 January 2005 the ATC stopped to apply and the sector is now subject to the normal rules of the GATT/WTO.

As a result, the Omani textile industry has not been able to secure its share in the U.S. market (Knappe, 2003). The exports from this sector sharply dropped from OR 36.1 million in 2000 (CBO, 2003, p.81) to OR 7.2 million in 2007 (CBO, Annual Report for 2007, 2008, p.99). Due to their lack of comparative advantages in natural resources (raw materials) and labour in comparison with other textile producing countries such as China, India, Pakistan, and Sri Lanka, 26 Omani textile factories were not able to survive and had to close down resulting in unemployment of around 1,231 Omani citizens (Al-Mandhari, 2003). Therefore, WTO multilateral arrangements have not benefited the Omani textile industry. But, does the FTA provide better arrangements and opportunities for the revival of Omani textile industries? Does Oman have better policy choices under the bilateral FTA approach than the multilateral WTO approach? The remaining of this section discusses the answers to these questions by analysing chapter three of the FTA in comparison with the relevant multilateral arrangements in the WTO legal texts.

6.2.3. Omani textile industry under the FTA

6.2.3.1. Rules of origin

Chapter three seems to be designed to mainly help the U.S pursue all different means to protect its domestic textiles and apparel industry from foreign competition. Rules of origin (ROO) stipulated in Article 3.2 and Annex 3-A represent the first aspect of this protectionist policy. Hence, textiles and apparels under the FTA are subject to two types of ROO; those of chapter four that are applicable to all types of products, as already analysed in the previous chapter of the thesis, and those specifically stipulated in Article 3.2 and Annex 3-A to chapter three. According to paragraph 1 of Annex 3-A, a textile or an apparel good can be regarded as an originating good if every single piece of non-originating materials used in the production of the good has undergone an *applicable change in tariff classification* as specified in the Annex. This change must take place *as a result of production occurring entirely in the territory of one or both of the Parties,...*[and that] *the good satisfies any other applicable requirements of* [chapter three] *and Chapter Four (Rules of Origin).*

[4] The TMB was a quasi-judicial standing body consisting of a Chairman and ten members (WTO, 2007j).

Thus, if a textile or apparel good does not undergo an applicable change in tariff classification as set out in Annex 3-A, it will not be regarded as "originating good". These strict ROO are difficult to meet by Oman as Oman does not have any local resource endowment to support the re-development of a robust and efficient garment industry. But, is there any exemption provided for Oman from the FTA requirements of ROO? To what extent will such an exemption be easy to carry out? The answers to these questions are discussed below.

6.2.3.2. Preferential Tariff Treatment: a special exemption but not very special

Articles 3.2.8 and 3.2.9 provide special exemption from ROO of chapter three as each party is required to accord a preferential tariff treatment (PTT) of permitting imports to its territory from the other party of an annual total quantity of 50 million square meters of cottons or man-made fibre apparel goods even if these goods do not meet the conditions of being an originating good. These goods must be *cut or knit to shape and sewn or otherwise assembled in the territory of a Party from fabric or yarn produced or obtained outside the territory of a Party*. In order to be able to claim for the PTT, the exporting party must submit a *properly completed and signed certificate of eligibility by an authorized official* (Article 3.2.10).

But, if the importing party raises questions about the accuracy of such a claim, it has the right to ask an importer to prepare and sign a declaration supporting the claim. The declaration shall be submitted to the competent authority of the importing party and must contain all pertinent information concerning the production of the good including; a) a description of the good, quantity, invoice number, and bills of lading, b) a description of the operations performed in the production of the good in the territory of one or both of the parties, and c) a statement as to any yarn or fabric of a non-party and the origin of such materials used in the production of the good (Article 3.2.11). The PTT is described by the MOCI (2006, p.8), as a *major concession* offered by the U.S. Via the exempted quota the Omani textile industry may be re-habilitated and re-established. Other foreign investors from textile producing countries might be encouraged to come back to Oman to benefit form the special exempted quota so that they can freely enter the U.S. market without having to abide by the strict U.S. ROO. However, this ambition might be difficult to realise due to three-fold factors that are thoroughly analysed below; namely, limited applications of the exempted quota, being subject to emergency actions, and strict administrative requirements.

6.2.3.2.1. Limited applications of the exempted quota

The exempted quota from the ROO requirements is only restricted to cottons and man-made fibre apparel goods; i.e. all other various types of textiles and fabric products will still be subject to the strict ROO (Article 3.2.8). Also, the exemption shall be limited for a period of ten years only after the entry into force of the FTA (January 1, 2009) (Article 3.2.9). Hence, the exemption is not comprehensive nor is it permanent or sustainable enough to encourage investors from other developing countries to establish textile factories in Oman. Moreover, Omanisation requirement might further discourage textile businesses to invest in Oman. Omani workers are far more expensive than workers in textile producing countries such as India, China, and Pakistan, which might not compensate the benefit they will be getting from the short-lived and restricted U.S. exemptions.

Furthermore, Oman is not unique in receiving the exempted quota. Other U.S. FTAs' partners such as Morocco and Bahrain have obtained it as well on even better conditions. Whereas Oman's exempted allotment form the ROO is 50 million square meters for cottons and man-made fibre apparel goods, Bahrain's exempted allotment for the same products is 65 million square meters for ten years (U.S.-Bahrain FTA, Articles 3.2.8 and 3.2.9). Morocco has got even a better deal as the exempted quota entails apparel products that go beyond man-made fibre apparel goods to include; wool – fine or coarse animal hair, horsehair yarn and woven fabric, cotton, man-made filaments, man-made stable fibres, special woven fabrics, tufted textile fabrics, lace, tapestries, trimmings, embroidery, and knitted or crocheted fabrics (U.S.-Morocco FTA, Article 4.3.9). Furthermore, the exempted quota is not a one-sided concession provided by the U.S. to Oman, but it is a mutual exemption where the U.S. textiles will enjoy the same exemption in the Omani market. This means that U.S. textile industries will be able to freely export to Oman an annual total quantity of 50 million square meters of cotton and man-made fibre apparel goods for a period of ten years without having to abide by the requirements of ROO.

In addition, the exempted quota can be looked at from the concept of Chinese strong competitiveness in the U.S market which has always been a matter of major concern for the U.S. Government and textile businesses. In 2004, the USTR office expected that the full implementation of the ATC would allow Chinese textile exports to monopolise 56 percent of the U.S. market, in comparison with only 12 percent in 2001, which would lead to losses of around 630,000 jobs (USTR, 2004g). Similar concerns were made by a group of U.S. textile manufacturers who asked President George Bush, in a letter dated July 7, 2003, to take the

necessary measures to stop the forthcoming Chinese monopoly of the U.S. textile markets and *reaffirm [the] Administration's commitments to a healthy U.S. textile sector by taking strong specific actions regarding the enormous threat from China* (American Manufacturing Trade Action Coalition, 2003, p.1). Similarly, different U.S. textile factories, along with their counterparts in other developed and developing countries, affected by the Chinese monopoly of the textile world market, have in different occasions urged the WTO to delay the full implementation of the ATC and extend the quota system for some years to come (People's Daily On Line, 2007; Wood & Sukun, 2005). As a result, the U.S. has imposed special strict safeguard measures against textiles and apparel goods imported from China, which is permitted under the bilateral China-U.S Agreement on China's WTO Accession (Yeung and Mok, 2004; Goodman, 2005). According to this agreement, the U.S. could impose quota measures if market disruption occurs as a result of import surges of textile and apparel products from China. This provision covers all products under the ATC. This mechanism would remain in effect until December 31, 2008 (Martin, 2007). In addition, the U.S. can impose safeguard measures on specific products imported from China that cause or, threaten to cause, market disruption on a product-specific basis. This provision would remain in effect for 12 years after China's accession to the WTO, which was November 2001 (ITCB, New U.S.-China Textiles Agreement, 2008).

Hence, the U.S.' exempted quotas in its FTAs with Oman and other countries could be seen as a new return to the quota system via which the U.S. seeks to diversify its sources of supply of textiles and apparel products, maintain some competitive ground for its domestic suppliers, and thus reduce the monopoly of Chinese products in the U.S. market. Perhaps by exempting its FTAs partners from the obligations of ROO for a certain period of time, the U.S. may seek to create a global phenomenon where the textile industries of its trading partners, such as Oman, would be rehabilitated and be able to regain some competitive ground in the U.S. market. If these partners began to suffer from Chinese competitive products, they would participate in lobbying against China and call for restricting Chinese monopoly of global textile market via new multilateral arrangements. In other words, the U.S. seems to create businesses incentives for its FTAs partners by providing them with exempted quotas so that they would be more interested in establishing textile industries to meet such quota. Once these incentives are created, they would naturally lobby against any Chinese monopoly that would threaten their businesses. China has, in response, expressed its frustrations from the highly strict measures imposed by the U.S. against its textile exports, which, in China's views, do not reflect the free trade principle. China argues that its strong competitiveness in the textile sector is due to the

comparative advantages it has in natural resources and cheap labour, which other developed countries such as the U.S. lack. Thus, the latter should accept this reality (Goodman, 2005).

However, the exempted quota may not necessary benefit Omani textile industries, simply because the competitive strength of China would be more aggressively exposed after 2008 and 2012 when its products will no longer be constrained by the temporary U.S. safeguard measures. Even other developing countries which enjoy higher competitive advantage in textiles and apparel productions over Oman such as Sri Lanka, Bangladesh, Cambodia, Pakistan, and Vietnam will similarly suffer from the strong competitiveness of China. Oman should accept this reality. As Denis Audet (2007, p.272) puts it:

> ...the true test of [developing countries] competitiveness will arise when Chinese exports are no longer constrained by safeguard measures at the end of 2008...Once the temporary safeguard measures lapse, the supply diversification factor is likely to disappear, thereby exposing all exporting countries to the competitive strength of Chinese suppliers and other integrated suppliers. In the meantime, exporters should not be complacent and use this opportunity to tackle their domestic obstacles and competitive weakness.

6.2.3.2.2. Emergency actions

The exempted quota can still be restricted from entering the U.S. market through the so-called "emergency actions" stipulated in Article 3.1 of the FTA. Through emergency actions, the importing party can increase tariffs against imports if a textile or an apparel good *benefiting from the preferential tariff treatment* (exempted quota) is imported in increased quantities that have caused *serious damage, or actual threat thereof,*[5] *to a domestic industry producing a like or directly competitive good.* The emergency action shall aim to *prevent or remedy such damage.* No emergency action can be taken or maintained beyond the period ending ten years; i.e. after the expiration of the exempted quota (Article 3.1.5.a). Also, emergency action cannot be taken against the same good of the exporting party more than once (Article 3.1.5.c), nor can it be maintained for a period exceeding three years (Article 3.1.5.b). Hence, the U.S. seems to have designed these "emergency actions" to ensure that its market would remain protected against any possible influx of textile imports from Oman that are exempted from the requirements of ROO, which may cause damage to U.S. textile products.

It is worth-noting that chapter eight of the FTA contains "safeguards measures" that are generally applicable to all types of products, including textiles and apparel. Hence, tariffs can be raised against textiles and apparel on the basis of two types of protective measures: "emergency actions" of Article 3.1 that can be applied during the ten-year period allowed for

[5]Article 3.1 does not specify what is meant by "serious damage" or "a threat of serious damage, which can be a matter of disagreement in the future.

the exempted quota, and the safeguard measures of chapter eight that apply to textile products as any other products. However, the situation under the WTO is less complicated as there are no special emergency actions specifically applicable to multilateral trade on textiles and apparels. The multilateral Agreement on Safeguards (AOS) applies at any time to all types of products, including textiles and apparel.

In order to determine, under the "emergency actions" of the FTA, that a serious damage or a threat has occurred, the importing party must examine the effect of increased imports on domestic industries in relation to factors such as output, productivity, utilisation of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment (Article 3.1.2.a). It is worth-mentioning that Article 4.2 of the multilateral AOS provides a similar provision on the necessity to conduct such an examination for a safeguard measure to be taken. However, Article 4.2 of the AOS clearly conditions that the determination of whether increased imports have caused or threatened to cause serious injury to a domestic industry *shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the casual link between increased imports of the product concerned and serious injury or threat thereof.* If there appear to be other factors that have caused the injury other than increased imports, *such injury shall not be attributed to increased imports* (Article 4.2.b, AOS). On the other hand, although Article 3.1.3 of the FTA conditions that the importing party may take an emergency action only following an investigation by its competent authorities, it does not literally stipulate, as is the case under Article 4.2.b of the AOS, that the investigation must demonstrate that there is a direct link *between increased imports of the product concerned and serious injury or threat thereof.* This is a clear loophole that may allow the importing party to take an emergency action even if the examination does not clearly determine that the serious injury or threat thereof is caused because of the increased imports.[6]

In addition, chapter three of the FTA contains no provision that obliges the importing party to notify the exporting party, or the Joint Committee, about its examination that precedes an emergency action or the outcome of this examination. The importing party is only obliged, as per Article 3.1.4 of the FTA, to inform the exporting party, in writing and *without delay*, about its intention to take emergency action. This is unfair for the exporting party, whose products would face increase in tariffs but without being fully informed about the real reasons for that.

[6] The same loophole is noticed in chapter eight of the FTA as it does not make such a linkage.

However, the situation under the WTO is much clearer and fairer for the exporting party. Article 12.1 of the AOS clearly obliges the importing party to *immediately notify* the Committee on Safeguards (COS) upon: a) its initiation of *an investigatory process relating to serious injury or threat thereof and the reasons for that*, b) its *finding of serious injury or threat thereof caused by increased imports*, and c) its *decision to apply or extend a safeguard measure*. Unlike the FTA, Article 12.2 of the AOS clearly emphasises that notifications on all these issues must include;

> all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization (Article 12.2, the AOS).

Also, the COS can review, at the request of the member taking a safeguard measure, *whether proposals to suspend concessions or other obligations are "substantially equivalent" and report its finding to the General Council for Trade in Goods* (GCTG) (Article 13.1.e, AOS). Hence, all these transparent measures required by the AOS are absent from chapter three of the FTA.

Moreover, as is explained in the previous chapter, Article 6 of the AOS permits a WTO member to take provisional safeguard measures in "critical circumstances". These circumstances are where delay would cause damage even before the finalisation of the investigations to determine whether or not there is clear evidence that increased imports have caused or threaten to cause serious injury. The duration of these provisional measures shall not be more than 200 days. This period will be counted as a part of the overall period that is permitted to be taken under the AOS. If the investigation does not find that increased imports have not caused or threatened to cause serious injury to a domestic industry, it will have to refund the amount incurred as a result of increases in tariffs as provisional measures. However, neither chapter three nor chapter eight of the FTA provides similar provisions.

It is worth-noting that Article 3.1.6 of the FTA obliges the party which has taken an "emergency action" to provide compensatory concessions to the exporting party. These concessions shall have substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the emergency action. The Article provides that such concessions have to be mutually agreed by both parties and to be limited to textiles and apparel goods, unless the parties agree otherwise. But, Article 3.1.6 does not clarify how long the negotiations to reach the compensatory concessions should take. It only stipulates that if parties

do not agree on compensation, the exporting party against whose goods the emergency action is taken may retaliate by taking tariff action against any goods of the importing party that has substantially similar trade effects to the emergency action. But this retaliation can only be taken for the minimum period necessary to achieve the substantially equivalent trade effects. When the emergency action ends, the right of the exporting party to receive trade compensation or take retaliatory tariff action shall all terminate (Article 3.1.6). The importing party will have to provide the same tariff treatment to the good that was subject to the emergency action before the action was taken.

Article 8 of the AOS, on the other hand, provides very similar provisions but with clearer time limitations. If consultations on compensatory concessions fail within 30 days, the affected exporting member shall be free to suspend the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the member applying the safeguard measure. This retaliatory suspension must be taken not later than 90 days after the application of the safeguard measure and upon the expiration of 30 days from the day on which a written notice of such suspension is received by the Council for Trade in Goods. However, chapter three of the FTA lacks these timing specifications.

6.2.3.2.3. Customs cooperation

Article 3.3 of the FTA lists detailed procedures for customs cooperation between Oman and the U.S. to: a) enforce measures affecting trade in textiles or apparel goods, b) ensure the accuracy of claims of origin, and c) prevent circumvention affecting trade in these goods. Article 3.3 also outlines specific obligations that Oman has to fulfill in order to achieve these objectives. Ironically, these obligations make the so-called "customs cooperation" a compulsory one and leave no choice for Oman but only to abide by them. Article 3.3.2 specifically obliges Oman to adopt a strict programme to ensure that textile and apparel goods exported from Oman to the U.S. are marked with the correct country of origin and that the documents accompanying the goods accurately describe the goods. In cases of discovery of violations, Omani authorities must inform the U.S., in a written report to be issued no later than 30 days after the resolution of the matter, about the nature of violation, actions taken by the Omani authorities and any penalty imposed, and the identity of the enterprise found to have engaged in such circumvention. Article 3.3.3 further obliges Oman to establish and maintain a programme of conducting on-site government inspections to verify that textile and apparel goods produced to be exported to the U.S. are truly made in Oman. These inspections should be conducted without prior notification to the enterprise concerned. It is important to note that these

obligations stipulated in Articles 3.3.2 and 3.3.3 strictly apply to Oman, not the U.S. The U.S.-Bahrain FTA does not specify similar requirements on Bahrain, but for Oman they are obligatory duties that must be carried out. A failure to do so can be regarded as a breach to the FTA rules.

Furthermore, Article 3.3.4 obliges the exporting party to conduct verification based on the request of the importing party -- which is likely to be the U.S. in most cases -- to determine that a claim of origin for a textile or apparel good is accurate. The exporting party will have to conduct the verification and, according to Article 3.3.10 must provide the importing party with a written report on the results of the verification along with the supportive documents and facts of the findings. Not only that, but even more seriously, Articles 3.3.5 and 33.6 oblige the exporting party to permit the authorities of the importing party to directly participate in its verification process, visit the premises of an exporter, producer, or any other enterprises located in the territory of exporting party and involved in the movement of a textile or apparel good. This provision provides direct interference in the sovereignty of the investigatory process of the exporting party. If the exporter or the producer of the textile product refuses to consent to a visit by the authorities of the importing party, the latter *may consider that the verification process cannot be completed* and thus, can, according to Article 3.3.11, *deny preferential tariff treatment to the textile or apparel good* that was subject to the incomplete verification, and *to similar goods exported or produced by the enterprise that exported or produced the good.* Hence, if Oman, as an exporting party, refuses, for one reason or another, to allow U.S. authorities to participate in the verification process or does not permit them from visiting the premises of textile factories in Oman, Oman can be deprived from the exempted quota. In other words, unless Oman relinquish some of its sovereignty and allow U.S. authorities to directly participate in the investigation, Oman may not entertain the benefit of the exempted quota.

Article 3.3.7 strictly obliges Oman[7] to require each enterprise that is involved in the production and exportation of textile and apparel goods in the Omani territory to maintain records relating to its production and exportation activities for a period of five years from the date on which such records are created. In addition, Oman must require each of these enterprises to maintain records relating to its *production capabilities.., the number of persons it employs, and any other records and information sufficient to allow officials of each Party to verify the enterprise's production and exportation of textile or apparel goods.* Article 33.8 obliges each party to provide the other party with all information and documents that are necessary to

[7] As Article 3.3.2 and 3.3.3 above, Article 3.3.7 only applies to Oman, not the U.S.

conduct verification. Hence, these requirements of detailed records of enterprises' operational activities and capabilities in Oman seem to be designed to help the U.S. conduct any verification on these enterprises.

6.2.4. Policy implications

The analysis of this section has clearly found that although Oman's textile and apparel sector flourished under the restricted quota system of the MFA, it substantially declined under the full implementation of the multilateral ATC. However, the situation in the FTA is not any better. In principle, Oman's textiles and apparel exports should freely enter the big U.S. market. But, this principle is obstructed by the complicated ROO outlined in chapters three and four of the FTA. As Oman lacks local resource endowments, it will be very difficult for Oman to meet these ROO. Ambitious views have been expressed about the exempted 50 million square meters of cottons or man-made fibre apparel goods from the ROO. However, the analysis has demonstrated that there are many serious complicated obstacles that would make such ambitions difficult to realise in actual reality. The first obstacle relates to the limited nature of the exempted quota, which only applies to cottons and man-made fibre apparel good and for a provisional period of 10 years only. After the expiry of this period, Oman will have to meet the complex requirements of ROO. The second obstacle relates to "emergency actions" where the U.S. (as an importing party) can increase tariffs against textile imports from Oman (exporting party) if the U.S. feels that these imports were of increased quantities and have caused serious damage or actual threat thereof. Although such an action can only be taken after an investigation on the issue, the U.S. can take the action without having to reveal the outcome of the investigation to the exporting party (Oman).

The third obstacle relates the "safeguard measures" which apply to all types of products including textiles and apparel. Hence, even after the expiry of the exempted quota and the emergency actions, the importing party (the U.S.) will still be able to restrict imports on the basis of these safeguard measures. The fourth obstacle is the very complicated administrative requirements on Oman to monitor the operations of its textile industry, investigate any cases of violations at the request of the U.S., and allow the U.S. authorities to participate in such investigations. If such requirements are not met, the U.S. could deprive Oman from the benefit of the exempted quota.

However, the situation under the WTO is much clearer. Textiles are no longer obstructed by the quota system and are now fully incorporated into the WTO/GATT rules. Oman should

address its interests in this sector on the basis of the fact that it does not enjoy comparative advantages in this sector and that the promised exempted quota under the FTA is limited in time and scope and full of obstacles. Oman was once exploited by Asian investors affected by the quota system. Although this exploitation ironically benefited Oman and helped flourishing its textile industry, Oman suffered a lot once the quota system ended. As textiles were brought to the normal rules of the WTO, these investors abandoned Oman; thus resulting in the redundancy of many Omani workers. Hence, under the post-2005 liberalised global trade by no means would Oman be able to effectively compete against other exporters from countries such as China, India, and Sri Lanka, which enjoy natural endowments and cheap labour advantages over Oman. Therefore, Oman should redefine its interests in this sector more as an "importing" rather than "exporting" country. Hence, it would be in the interests of Oman to support the full multilateral liberalisation of this sector and encourage imports of textiles and clothing from different Asian countries; China, Turkey, Bangladesh, India, Pakistan, and Sri Lanka, which would lead to reduction of textile prices and benefit consumers in Oman. Oman can also act as a hub via which these imports can be re-exported to other neighbouring countries. Because of all these factors, Oman has better policy choices under the WTO than the FTA.

6.3. Government procurement

6.3.1. Government procurement under the multilateral trading system

Government procurement (GP) refers to the purchasing activities of government entities of products and services that they require to carry out their activities. Although GP was not incorporated in GATT 1947, it throughout the years gained noticeable importance among developed countries due to increasing pressures from their national business corporations to seek new opportunities in other markets. As a result, a sub-group was established in 1976 during the Tokyo Round (1973-1979) to look into the issue, which culminated in 1979 in reaching the first comprehensive Agreement on Government Procurement (GPA) (Arrowsmith, 2003). The GPA initially applied to goods and to its signatories only, most of which were developed countries but was subsequently amended in 1987 and 1994. Besides goods, the GPA now covers services, including construction services. Also, in addition to central governments, the GPA entails local and regional governments for many of its signatories (WTO, General overview of work on Government Procurement, 2007k). The exact level of market opening is specified in each party's Appendix I to the Agreement and is accorded on the basis of

reciprocal treatment.[8] The extension of the GPA to new areas and entities is estimated to have lifted up the amount of international procurement businesses by tenfold (Arrowsmith, 2003).

However, the GPA has remained a plurilateral agreement whose non-discriminatory principles only apply to its 38 signatories, most of which are developed countries (WTO, the Plurilateral GPA, 2007r).[9] The WTO shall only serve as the framework for the implementation, administration, and operation of the GPA. The Ministerial Conference has no decision-making power over the GPA, but it is the task of the Committee on Government Procurement (CGP), which consists of representatives from each party, to administer the GPA. The general principle is that, where WTO members do not accept obligations under a plurilateral agreement they have no right to participate in measures relating to that agreement. Since 1997, parties have been re-negotiating the GPA to further extend its coverage, reduce any remaining discriminatory elements, and improve its text and take into account the increasingly important phenomenon of e-procurement (WTO, 2007r).

6.3.2. Unsuccessful attempts to multilateralise the GPA

In an attempt to open more new markets for their multinational corporations, developed countries have for long sought to convince developing countries to join the GPA.[10] They argue that discrimination by one government against foreign suppliers of goods and services is a clear breach of the free trade ideology and non-discriminatory principles on which the MTS is based (Mcafee, 1989; Miyagiwa, 1991; Evenett and Hoekman, 2005a,b). However, developing countries have reluctantly refused to join the GPA or multilateralise it. For them, procurement activities are important for developing national industries and creating jobs even though they entail discriminatory policies against foreign suppliers (Bates and Williams, 1996; Evenett, 2002; Hilal, 2003).

As a result, ministers at Singapore MC (1996) reached a mediatory solution and decided, according to paragraph 21, to set up a working group *to conduct a study on transparency in*

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[8] Appendix I consists of different annexes that list the covered central, sub-central and other public entities and provide a list of the services and construction services covered beyond goods. The Annexes also determine the threshold values above which procurements are effectively covered by the Agreement and include special and general notes explaining and qualifying each party's market opening commitments. An analysis of all these issues is provided below.

[9] The parties to the GPA are; Canada, the European Communities with regard to its 25 member states, Hong Kong, China, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland and the United States. Also, there are number of countries which are given the status of "observer" as a preliminary step for acceding to the GPA, such as Georgia, Jordan, and Oman (WTO, Parties and Observers to the GPA, 2007s).

[10] GP of goods and services is estimated to account for 10-15 percent of GDP for developed countries and 20 percent of GDP for developing countries (Centre for International Trade Development – Harvard University, 2007).

government procurement practices, taking into account national policies, and based on this study, to develop elements for inclusion in an appropriate agreement. The idea was to draw a wide support from different WTO members to the issue of GP by firstly improving transparency measures, without making them committed to any kind of market access obligations. A study on TGP would be the starting point which could then lead to improved transparency and, at a later stage, to a better market access to government markets, and perhaps to a comprehensive multilateral agreement on GP that can replace the plurilateral GPA (Evenett, 2002; Evenett and Hoekman, 2005a,b). At the Doha MC (WTO, 2001), ministers put more emphasis on the issue of the TGP and highlighted the steps towards reaching a multilateral agreement. But disagreement between developed and developing countries on the definition and contexts of transparency proved to be very strong as a result of which the General Council decided on August 1, 2004 (July Package) to drop the TGP from the Doha Work Programme, along with other two Singapore issues; investment and competition (WTO, the July Package, 2004).

In addition, GP is excluded from the GATS whose Article XIII clearly states that GP of services is neither subject to the MFN requirement, nor market access, nor national treatment. But, as required by Article XIII.2, a working party on GATS rules was established in March 1995 to carry out, among other tasks, the negotiating mandate contained in the GATS on GP in services. But, such negotiations have not resulted in any agreement as developing countries rejected subjecting their GP to any kind of multilateral arrangements (Sauve, 2002; WTO, the GATS, 2008m).

During its negotiations to accede the WTO, Oman was asked by the U.S. and the EU to join the GPA, but Oman sought to avoid making any commitment due to the importance of GP in promoting and developing national industries (Tender Board, n.d). In the end, due to the pressures of developed countries, Oman agreed to be an "observer" to the GPA and promised to start negotiating GPA membership upon joining the WTO. Oman also promised that if the outcomes of the negotiations were satisfactory for the interests of Oman, it *would complete negotiations for membership in the Agreement within a year of accession* (WTO, Report of the Working Party on the accession of the Sultanate of Oman to the WTO, 2000a, paragraphs 120 and 121). However, Oman has not started such negotiations and remained an "observer" to the GPA since its accession to the WTO in November 2000; a status that allows Oman to attend the meetings of the CGP, but without participating in its decisions.

Perhaps, if Oman faced new pressures to start GPA negotiations, its position would be strengthened if it conducts such negotiations collectively with other GCC countries. This proposal is supported by an official report written by the MNE (2001a, pp.10-11) on the impact of Oman's membership to the WTO, where the MNE stated that the GPA might not work for the benefit of Oman and it is best for Oman to negotiate the agreement collectively with other GCC countries that are members in the WTO to form a unified position on this important issue. However, this policy choice is not available under the FTA, where Oman is obliged to discriminatingly open its GP market to U.S. bidders and subject the procurements of a wide range of its government entities to the U.S. designed rulings; a commitment that has been successfully avoided under the WTO. Because of that, multilateral developments on the GP issue have worked for the interests of Oman as a small economy seeking to develop its national industries; an opportunity that is lost under the FTA.

6.3.3. A comparative analysis between the GPA and chapter nine of the FTA[11]

This analysis is divided into two stages. The first stage focuses on the scope and coverage of applications of the two agreements, which is revealed below. The second stage covers the analysis on other provisions related to transparency, publications, measures related tender process such as time limitation, tender documentation, technical specifications, conditions for participation and qualifications of suppliers. It also entails some special considerations for developing countries that are provided under the GPA but not the FTA. The analysis of the second part is provided in appendix (6.3).

6.3.3.1. Scope and coverage of application

Articles 9.2 of the FTA and III of the GPA oblige each party to ensure that goods and services suppliers of other parties are accorded treatment no less favourable than that accorded to domestic suppliers (national treatment) or suppliers of other parties (MFN treatment). These non-discriminatory principles only apply to covered government entities, services, and the required threshold that are specifically listed in each party's annexes to the FTA or GPA, and reached through negotiations based on reciprocity. Hence, analysing the scope and coverage of the application of the two agreements require an examination of each of these elements. As being an official party to the FTA, but not yet to the GPA, Oman's GP market will be preferentially open for U.S. goods and services suppliers who will be able to compete on equal terms with national suppliers in regard to covered procurement; a treatment that is not extended to suppliers from other GPA parties.

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[11] As Oman is an "observer" to the GPA, this analysis is believed to be very important for Oman's policy makers to determine the differences between Oman's potential commitments under the GPA vis-à-vis the FTA.

6.3.3.2. Covered government entities

Covered government entities are those whose procurements are made subject to the regulations of chapter nine of the FTA and the GPA. Any other non-covered entities are exempted from such regulations. Under the GPA, covered entities are listed in Annexes 1, 2, and 3 to Appendix I which entail central, sub-central, and other government entities respectively. As not yet being an official party to the GPA, the procurements of Oman's government entities are not subject to the GPA. Thus, under the WTO these entities can favour national bidders over foreign competitors in regard to their procurements. But under the FTA, Oman is committed to subject the procurement of 38 government entities to the regulations of chapter nine; 33 of which are listed in section (A) and the other 5 entities in section (B) of Annex 9. These entities do not only include government ministries and institutions but also entail government owned companies such as Oman Oil Company, Oman Refinery Company, and Sohar Refinery Company (see Appendix 6.4). It is important to note that all agencies subordinate to the 33 entities listed in section (A) are also subject to the FTA regulations. For instance, the procurement of any regional hospital or directorate that falls under the Ministry of Health is subject to these regulations. Even more surprisingly, after more than two months from the conclusion of the FTA negotiations and their final mutual agreement on the coverage lists on October 3, 2005, the U.S. Trade Representative, Robert Portman, addressed a side latter dated January 19, 2006 -- the same date of signing the FTA -- to the Omani Minister of Commerce and Industry in which the USTR states the followings:

> With respect to procurement, the Sultanate of Oman Government does not exercise any undue control or influence in procurement conducted by Omantel, Petroleum Development Oman, and Oman Liquefied Natural Gas. The Sultanate of Oman shall ensure that all procurement by these entities is conducted in a transparent and commercial manner....this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

The above-mentioned three entities are not included in any of the covered lists annexed to chapter nine of the FTA. Thus, in principle, they should be excluded from the FTA regulations. In all the three entities the Government of Oman owns substantial shareholding; (60% in PDO, 51% in OLNG, and 70% in Omantel). Perhaps, they are the most important corporations for the economic development of Oman. Their procurement is of a significant importance for national suppliers and development of Omani businesses. However, as a result of the above-mentioned side letter, and the confirmation letter of the Minister of MOCI signed on the same date (January 19, 2006), the procurement of these entities cannot be directed to favour national businesses. This prevention constitutes part of the FTA obligations (Appendices 6.5 and 6.6).

However, it is worth-noting that Oman managed, for social and religious purposes, to exempt certain procurement activities of some few covered ministries from these regulations. These are: (a) Ministry of Agriculture and Fisheries, in relation to advancing agricultural support or human feeding programmes; (b) Ministry of Awqaf and Religious Affairs, in relation to construction services for buildings intended for religious purposes; (c) Ministry of Education, in relation to the procurement of printed materials for educational purposes; (d) Ministry of Information in relation to the acquisition development, or production or programme distribution services, and (e) Ministry of Transport and Communications, in relation to procurement made by Civil Aviation Administration (see Appendix 6.4).

On the other hand, as being an official party to both the GPA and the FTA, the procurement of many U.S. government entities are generally subject to the regulations of both agreements. However, the U.S. made many exceptions whereby certain procurements of some government entities, or particular branches of these entities, are exempted from abiding by the regulations of the FTA and the GPA. These exemptions far exceed those of Oman and clearly demonstrate the U.S. eagerness to resort to protectionism wherever possible. For example, the U.S. has exempted specific procurements made by some covered entities from the rulings of the GPA and chapter nine of the FTA such as the procurement of Department of Agriculture and Fisheries of agricultural goods for agricultural support or human feeding programmes and the procurement of the Department of Energy for the support of safeguarding nuclear materials or technology or oil purchases related to the strategic Petroleum Reserve (see Appendix 6.7 for more details on these exemptions).

Moreover, although the U.S. subjects many of its sub-central government entities to the regulations of the GPA as listed in Annex 2 to Appendix I of the GPA, these entities are not covered in chapter nine of the FTA (see Appendix 6.8). The U.S. seems to have used the FTA as a protective tool to escape from its free trade obligations under the GPA. This implies that while U.S. goods and services suppliers can benefit from the preferential treatment of the FTA and discriminatingly compete for the procurement of Oman's government entities at both central and sub-ordinate levels, Omani businesses will not be able to enjoy the same preferential treatment in regards to the procurements of the U.S. sub-central government entities because these entities are excluded from the FTA coverage.

Not only that but even within these U.S. sub-central government entities there are some procurements exempted from the regulations of the GPA. For instance, only the executive

branch agencies of the states of Arizona, California, Colorado, Arkansas, and Kansas are made subjects to the rulings of the GPA, which means that the legislative and judiciary branches are exempted from these rulings. Also, within the executive branch of the state of Arkansas, the Office of Fish and Game and constructions services are exempted from the GPA regulations. The same applies to the State of Kansas which excludes construction services, automobile, and aircrafts from its GPA obligations.

In addition, there are special notes mentioned at the end of the U.S. list of sub-central government entities under the GPA, where even more exemptions are made. These exemptions are: 1) procurement of construction-grade steel, motor vehicle and coal for twelve U.S. states such as; New Hamshire, Oklahoma, Pennsylvania, and Wyoming, 2) discriminatory programmes that seek to promote the development of distress areas and business owned by minorities, disabled veterans and women, 3) every U.S. states listed in Annex 2 can at any time impose different measures of restrictions to *promote the general environmental quality* provided that such restrictions are not used as *disguised barriers to international trade*, 4) procurement made by a covered entity on behalf of a non-covered entity, and 5) restrictions attached to federal funds for mass transit and highway projects. All these exemptions demonstrate the U.S. pursuance of all different means to trade protectionism.

6.3.3.3. Covered goods, services, and construction services

Procurements of goods, services, and construction services made by covered government entities are subject to the regulations of the GPA and chapter nine of the FTA, except where it is otherwise specified. However, the way of specifying the exceptions in regards to procurement of services differ in each agreement. The GPA, as per Annex 4 to Appendix I, permits parties to choose between a positive and a negative list[12] approach. Due to its flexibility, most parties to the GPA, including the EU and Japan, have used the positive list approach. Thus, only the selected services are subject to the GPA regulations. However, under the FTA, Oman was obliged to use the negative list approach only, which implies that all types of services are subject to chapter nine, except where it is specifically outlined in Section D of Annex 9. These exceptions include; printing of revenue stamps, bank notes, and religious material, telecommunications services, information processing, telecommunications network

[12] Under a positive list approach, all services are potentially not subject to the GPA except those specifically selected by a party. But, under the negative list approach all services are potentially subject to the GPA except those specifically excluded by a party.

management services, arbitration, and financial intermediation services.[13] Hence, any other non-listed services are subject to the FTA. However, although the U.S. has used negative lists under the GPA as well as the FTA, it seems to have managed to avoid the disadvantages of this approach by making very wide and detailed exceptions that far exceed those of Oman (see Appendix 6.9). Not only that but some of the exceptions are made open-ended to include all possible sub services that might come under them. For instance, "all classes" of research and development and "all classes" of utilities are exempted from the FTA and GPA regulations. Also, all different types of services that come under information processing, telecommunications, transportation, travel and relocation services are exempted. In other words, the U.S. seems to have turned the "negative list" approach under the two agreements to a kind of "positive list" of its own.

In addition, Annex 4 of Appendix I to the GPA defines a construction services contract as the contract whose objective is *the realization by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification* (CPC)[14]. Thus, if there were any other types of services not included in Division 51, they may not be subject to the GPA rulings. But, under section (E) of Annex 9 to the FTA it is stated that the *Chapter applies to all construction services procured by the entities listed in Sections A and B*. This obligation is very general and unlimited. Oman has made no exception whatsoever in section (E), which means that the procurement made by covered entities of all types of construction services, will be subject to the rulings of chapter nine. However, the U.S., on the other hand, has excluded the procurement of dredging services from the obligation of chapter nine, which further demonstrates the U.S. resort to protectionism whenever possible.

6.3.3.4. Thresholds levels

When looking into party's schedules to determine whether a particular procurement contract is covered, it is not enough to check whether the procuring entity or a particular good or service is covered but it is equally essential to check the threshold level specified in the schedules of the party. The rules of the GPA or chapter nine of the FTA will only become applicable to a particular GP contract of a covered entity, if the contract equals or exceeds the relevant

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[13] It is important to note that the exception on financial intermediation services is not absolute because other related services such as insurance, pension, and investment banking are not part of this exception; thus they are still subject to the rulings of chapter nine.

[14] Construction services in the sense of Division 51 of the CPC include: pre-erection work at construction sites, construction work for buildings, construction work for civil engineering, assembly and erection of prefabricated constructions, special trade construction work, installation work, building completion and finishing work, renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator.

threshold. Under the GPA, as is the case with the covered government entities, the level of threshold for each party's schedules is reached through negotiations with other parties on reciprocity basis. Thus, each party to the GPA shall specify the levels of minimum thresholds that apply to the procurement of goods and services of covered entities listed in Annexes 1,2, and 3 to Appendix I. But, there are general threshold levels set out for all parties. Any value below the general threshold level is not applicable to the GPA rulings. These general threshold levels are; 1) for contracts of goods and services procured by central government entities covered in Annex 1 shall be no less than 130,000 SDR (Special Drawing Rights)[15], and 2) for construction services procured by these central entities shall be no less than 5,000,000 SDR. These thresholds are what Annex 1 to Appendix I of the U.S. contains under the GPA.

Also, higher threshold levels can be applied to sub-central government entities covered in Annex 2 and other government entities, enterprises, utilities covered in Annex 3 to Appendix I. The threshold level of goods and services procurement made by the U.S. sub-central entities covered in Annex 2 is 355,000 SDR, which is higher by 225,000 SDR than the threshold set for procurements of central government. Hence, these U.S. sub-central entities enjoy more protection than the central entities procurement. This protection is further enhanced in procurement of goods and services of other U.S. government utilities listed in Annex 3 to a level of 400,000 SDR, apart from a few utilities where the threshold level is set for 250,000 SDR. However, the threshold level for procurement of construction services is 5,000,000 SDR for all types of U.S. government entities.

As is still being an "observer", Oman is not yet committed by the GPA rules. Since Oman is based on a central level of government, Oman ought to consider the fact that threshold levels for central entities are made very low. Thus, Oman's government entities, if they ever became subject to the GPA, would not be able to favour national firms if their procurement contracts of goods and services exceeded 130,000 SDR. Hence, if Oman decides to negotiate GPA membership, it would be perhaps better for Oman to separate central entities from their subordinates into two different annexes. For example, the Ministry of Interior might be listed in Annex 1, but the different governorates that come under its supervision in different regions of Oman could be listed in Annex 2. Then, Oman could set out different threshold levels for

[15] SDRs can be defined as a basket of major currencies used in international trade and finance. Currently, the U.S. dollar, the euro, the pound sterling, and the Japanese yen are the currencies in the basket. The amounts of each currency making up one SDR are chosen in accordance with the relative importance of the currency in international trade and finance. Every five years, the IMF Executive Board determines the currencies in the SDR basket. The weights of the currencies at the present time for the period of 2006-2010 are: USD 44%, EUR 34%, JPY 11%, and GBP 11%.

each Annex, as the U.S. has done, with higher threshold for regional level. In addition, Oman could list other government utilities whose procurements may be particularly very important for the national economy in Annex 3 with an even higher threshold level than in other two Annexes. The proposed Annex 3 can entail some government owned companies such as Oman Refinery Company and Oman Gas Company, or government supervised institutions such as Sultan Qaboos University. However, these policy choices are not available under the FTA.

Under the FTA, as is already explained above, Oman has listed in section A of Annex 9 most of its government entities, with the exception of few sensitive entities that deal with defence and security such as the Ministry of Defence and Royal Police of Oman (appendix 6.4). Paragraph 2 of section A clearly states that chapter nine *applies to all agencies subordinate to the entities listed in each Party's schedule*. Thus, Oman is obliged to treat regional administrations in the same way to their central government entities. Hence, the opportunity, which could still be available for Oman under the GPA to make three types of lists of covered entities each of different thresholds in the way proposed above, does not exist under the FTA.

In the first two years after the date of entry into force of the FTA, the threshold level for the procurement of goods and services made by Omani government entities covered in section A is $260,000. After two years, this threshold will decrease to $193,000, where procurement of government entities of Oman will be treated in equal footing with the U.S. entities irrespective of the differences in the level of development of the two parties. Threshold level for procurement of construction services by the government entities is $8,422,165 which is applicable to both countries with the immediate effect of the FTA. However, for other entities covered in section B (list A) of Annex 9 for both parties (see Appendix 6.4), the threshold is put up to $250,000. This implies that these entities will enjoy more protection than entities listed in section A as their threshold for procurements of goods and services is higher by $57,000 than those listed in section A. This protection is also apparent in the procurement of construction services for these special entities in section B, as the threshold is $10,366,227 which is higher than what is set for entities of section A by $1,944,062. Hence, while Oman has no commitment under the GPA and still has the chance to bargain for better terms and conditions, Oman is committed to discriminatorily open its GP market to U.S. suppliers of goods, services, and construction services and apply the same threshold in equal footing with the U.S.

Also, it is important to note that both the GPA (Article II) and the FTA (Articles 9.1.6 and 9.1.7) set out clear principles about how the valuation of GP should be carried out, so that it can be determined whether or not the required level of threshold of the procurement has been reached. Firstly, when estimating the value of procurement, all forms of remuneration, including any premium, fees, commissions and interest receivable that make the overall value of the procurement shall be taken into account. Secondly, procurement must not be divided nor must a particular method of estimating the value of procurement be used for the purpose of avoiding the application of the GPA and chapter nine of the FTA.

6.3.3.5. General notes

Besides commitments and exceptions outlined in each party's schedules, there are also general notes outlined by each party in the end of these schedules. General notes can include further exceptions or additional obligations. Perhaps, the most important general note made under the FTA by both parties is related to the exception of small businesses from the obligation of chapter nine. The MOCI (2006, p.12) regards this exception as an *important concession* provided by the U.S. to Oman, as Oman will be able to continue its preference prorgrammes to Omani goods and services supplied by national small and medium enterprises, which constitute the bulk of Omani enterprises. However, the real situation might not be as rosy as the MOCI describes, because of the following reasons. Firstly, the exemption is not one-sided made by the U.S. in favour of Oman, but it is a mutually agreed concession. The U.S.' small and minority businesses will be similarly exempted from the practice of free trade in the U.S. procurement market. Secondly, exempting small and medium businesses is not restricted to the Oman-U.S. FTA, but it exists in other U.S. FTAs as the ones with Bahrain, Morocco, and Australia. The U.S.' aim is not to help other parties' small businesses but rather to protect its own.[16] Thirdly, the actual wordings of the U.S. general note are more straightforward to mean exempting U.S. small businesses from the obligations of chapter nine. The U.S. note states that: *[t]his Chapter does not apply to set asides on behalf of small or minority businesses. Set-asides include any form of preference, such as the exclusive right to provide a good or service and price preference.* Hence, any preference programme provided to small or minority businesses in the U.S. are not subject to the FTA rulings. But, the general note of Oman is less straight forward as it states:

> The Sultanate of Oman Government reserves the right to maintain its existing preference program established under Sultani Decree 1/79, Article 21, and its successor programs to promote the development of its small and medium enterprise. "Small and medium

[16] This protectionist policy of the U.S. is deeply rooted in the U.S. culture and clearly reflected in the Buy-American Act (1933) which requires the U.S. Government to offer a 6 percent preference for domestic suppliers; i.e. if the lowest domestic bid is no more than 6 percent higher than the lowest foreign bid, the contract is awarded to the domestic firm. This preference is further increased *to 12 percent in the case of small businesses and firms in regions of high unemployment, and 50 percent for military procurement.* The Act further requires that particular goods to be purchased within the U.S. (Mcafee and Mcmillan, 1989, p.292).

enterprises" are defined in "A Glance at Industry in Oman", as published by the Directorate General of Industry, Ministry of Commerce and Industry.

The above note implies that Oman's preference to small and medium enterprises is restricted to its definitions provided in the "A Glance at Industry in Oman", as published by the Directorate General of Industry. This definition is based on the number of employees where small enterprises are known to be those whose employees are less than 10, whereas the medium enterprises are those whose number of employees is from 10 to 99 (Directorate of General Industry, MOCI, 2002, p.7). Thus, Oman will have to abide by this definition. However, U.S. preference to small enterprises is not based on any definition which provides the U.S. with more freedom to implement its preference policy to its national enterprises and according to its own interpretation of what small businesses could mean. According to Wiss, Thurbon, and Mathews (2004), U.S. small firms may employ up to 1500 people! Having analysed the different areas of scope and coverage of the GPA and the FTA, the question now is: can a party rectify or modify a covered entity, or service? The answer is discussed below.

6.3.3.6. Rectifications and modifications to coverage

Articles 9.12 of the FTA and XXIV.6 of the GPA permit parties to modify the coverage of their lists annexed to the agreements, provided that certain conditions are met particularly the approval of the other parties. Modifications can entail, for instance, the withdrawal of a covered entity or transferring it from one list or annex to another. However, the party must notify its intention to modify a particular coverage. Under the GPA, the notification is made to the Committee on GP, and under the FTA it is made to the other party. In the latter case, the notification has to be made in writing but under the GPA there is no reference made about that. If the other party – or parties – does not object within 30 days after the notification is made, the modification will automatically take place. Again, under the FTA, the other party has to confirm its approval in writing but the GPA does not make such a reference. However, if the other party – or parties – objects within 30 days of the notification to the proposed amendment, the two agreements provide different provisions depending on the type of the proposed modification as explained below.

Firstly, if the proposed modification is to rectify, or transfer an entity from one list/annex to another and the other parties disagree to such a modification, the Chairman of the Committee of the GPA shall promptly convene a meeting of the Committee which shall take into account the proposal of the amendment as well as any claim for compensatory adjustment, with a view to maintain a balance of rights and obligations. If there is no agreement reached via the Committee, the matter may be diverted to the dispute settlement procedure according to Article

XXII of the GPA. However, the situation is less clear under the FTA. Article 9.12.1 of the FTA only requires the party which proposes the modification to offer, within 30 days after the notification, acceptable compensatory adjustments to the other party to maintain a level of coverage comparable to that existing before modification. But, Article 9.12.1 does not clarify what should happen if the other party does not accept the proposed compensation and continues to object to the modifications.

Secondly, if the proposed modification is about a purely formal nature such as a change in the name of a covered entity, and the other party -- or parties -- objects to such a modification, the Chairman of the Committee under the GPA shall promptly convene a meeting of the Committee and the same process mentioned above will be followed. However, the FTA does not address this possibility of objection, as Article 9.12.2 only requires the modifying party to notify the other party about the proposed modification and if the latter does not object in writing within 30 days, the modification becomes effective. Thus, it is not clear what should happen if the other party objects to the modification.

Thirdly, if the proposed modification is about a withdrawal of a procuring entity over which the modifying party has effectively eliminated its control or influence, and the party – or parties – objects to such a modification, the matter under the GPA may be pursued in accordance with the procedures on consultations and dispute settlement contained in Article XXII. Under the FTA, the objecting party may request further information or consultations with a view to clarifying the nature of any government control or influence and reaching agreement on the procuring entity's continued coverage under chapter nine. But, once again it is not clear how the situation will be resolved in cases the two parties do not reach an agreement.

6.3.3.7. Exceptions and non-applications

Articles 9.1.4 of the FTA and XXIII of the GPA allow parties to adopt measures that are necessary to protect public morals, public order and safety, and human, animal, plant life and health, and intellectual property. Article 9.1.4, further adds measures of protecting environment that are not found in the GPA. Perhaps the biggest concern about these measures is that they can be used as forms of protecting domestic businesses rather than the real protection of public order or safety or the environment. The case of Dubai Port World (DPW) is a clear example of that. Pressures were exercised by different U.S. congressmen and organisations against this UAE state-owned company, when it took over Peninsular and Oriental Steam Navigation

Company (P&Q) -- a British firm that used to run many of U.S. ports -- claiming that this takeover would compromise the U.S. port security. The DPW had in the end to sell the project to a U.S. investment group (Carl, 2006; Sanger, 2006).

In addition, each of the FTA and the GPA contains their own exceptions. For the FTA, chapter nine, as per Article 9.1.4, does not apply to: government aids, procurement funded by international grants or loans, the acquisition of fiscal agency or depository services, liquidation and management services for regular financial institutions, sale and distribution services for government debt, procurement for purposes of providing foreign assistance, and procurements made outside a party's territory for consumption outside the territory of the procuring party. This latter exception is particularly important for the U.S. given the different forms of U.S. existence in different parts of the world; for military, security, or economic purposes. The GPA does not have similar exceptions.

Article XXIII.1 of the GPA, on the other hand, permits parties to take any action or not to disclose information necessary for protecting security interests or the procurement of arms, ammunitions and other materials essential for the defence of the country. The FTA does not include a similar exception, but as Oman and the U.S. have both excluded their government entities dealing with defence and securities issues from their covered lists, procurements of arms and other defence materials are not subject to chapter nine. However, the difference between the two agreements in this respect is that the exclusion of procurement of arms and defence materials is clearly stated in the main body of the GPA, which means that this exclusion is a principal obligation in the agreement. But in the FTA the exclusion of procurement of arms and defence materials is not part of the main body of the agreement. Oman and the U.S. excluded government entities which deal with defence and security issues from the covered list. Thus, if negotiations on the coverage of their schedules are re-opened in the future as per Article 9.12 (modifications and rectifications to coverage), defence procurement may become subject to chapter nine rulings depending on the outcome of the negotiations.

6.3.4. Policy implications

The analysis of this section has clearly explored that, under the WTO, the collective opposition of developing countries to multilateralise the GPA helped Oman avoid being an official party to this plurilateral agreement. Oman tactfully managed to escape the pressures of the U.S. and the EU, by agreeing to be an "observer" to the GPA. Although Oman promised to start

negotiating GPA membership upon joining the WTO such a promise has not been fulfilled. The multilateral approach characterised by continuous disagreements between developed and developing countries have provided Oman with enough shields to avoid any commitments under the GPA. Thus, as Oman is not yet a party to the plurilateral GPA, Oman can continue utilising its GP as a tool of promoting national industries. Even if Oman becomes to face more pressures from other GPA parties to officially join the agreement -- on the basis that it has been an "observer" for quite long time and that it has already agreed to open its GP market to the U.S. -- Oman can escape such pressures or minimise it by negotiating the GPA membership via the GCC. Through collective negotiations, Oman's position will be strengthened.

However, all the above-mentioned policy choices are not available for Oman under the FTA. Oman is obliged to subject the procurements of 38 government entities to the FTA regulations. The U.S. goods and services suppliers will enjoy a very favourable treatment to equally compete with Omani national suppliers for the procurements of these entities; a treatment that is not extended to other GPA parties. The modest capabilities of the Omani goods and services suppliers would make them vulnerable to stand against U.S. goods and services suppliers either in the Omani or in the U.S. market. Oman must prepare itself for this reality. Not only that but the Government of Oman will not be able to influence the procurement of three very important entities in which it owns important shareholdings; namely Omantel, Petroleum Development Oman, and Oman Liquefied Natural Gas. Although these entities are not included in any of Oman's lists and were not agreed about during the negotiations, the mutual side letters signed by both Oman and the U.S. on this issue make them integral parts of the FTA.

The U.S., on the other hand, pursued all possible means to protect its GP market. Oman must be aware of the fact that the U.S. commitments under the FTA are lower than its commitments under the GPA. A whole list of U.S. sub-central government entities that are made subjects to the GPA regulations, are not included in the FTA. This means that Omani businesses will not be able to compete for the GP of these U.S. sub-central government entities, whereas other parties to the GPA can do so. Finally, it is important for Oman to realise that although the GPA and the FTA are very similar in nature because they are designed and structured by the U.S. and other developed countries, the GPA provisions are less ambiguous than those of the FTA. The latter contains some loopholes that can be subjects to disagreements between Oman and the U.S. in the future.

6.4. Telecommunications sector

6.4.1. Oman's telecommunications sector under the WTO

During the last ten years, the telecom sector in Oman has undergone through many structural and operational changes; changes that have been mainly applied as a result of Oman's commitments under the WTO. The full monopoly that has for long been entertained by the Government via Oman Telecommunications Company (Omantel) has started to be trimmed down as a new competitive player in mobile services; the Omani Qatari Telecommunications Company (NAWRAS),[17] has been awarded the license of a second mobile operator. This monopoly will be even further reduced when new players enter the mobile and the fixed line markets of Oman. Under the WTO, telecom services are mainly subject to the rulings of the General Agreement on Trade in Services (GATS). The rules of the GATS that particularly affect Oman's telecom services, can be divided into four interlinked areas; namely 1) the general provisions of the GATS that are relevant to all types of services including telecom services, 2) the specific commitments made by Oman in relation to telecom services in its Schedule of Specific Commitments on Services, 3) the Annex on Telecommunications, and 4) the Reference Paper. While Appendix (6.10) provides the analysis on some of the main provisions of the GATS, this section focuses on the other three elements due to their direct relations to telecom services.

6.4.1.1. Schedules of Specific Commitments[18]

Specific commitments of the GATS are those undertaken by individual members in specific sectors of services such as telecom. They are dealt with under the provisions of Part III of the GATS. They mirror the flexible aspect of the GATS as each member is allowed to adjust the conditions of market entry and participation to its sector-specific objectives and constraints, which should go along with its national interests (WTO, Guide to reading the GATS schedules of specific commitments, 2008). Thus, when a member -- based on a positive list approach -- makes a specific commitment in a specific sector, it is obliged to abide by this commitment according to the specified level of market access and national treatment outlined in its

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[17] Nawras is a joint venture between Qatar's Qtel, European Telecommunications Company (TDC), and five pension funds of; Ministry of Defence, Royal Office, Diwan Royal Court, Internal Security Service, and Sultan's Special Force (Nawras, 2008).

[18] For the purpose of structuring commitments of members, the WTO Secretariat has developed a classification system comprising twelve main service sectors in business, communication, construction and related engineering, distribution, education, environment, finance, heath-related and social services, tourism and travel, recreation, culture and sport, transport, and other sectors of services that are not included elsewhere. These sectors are further subdivided into a total of some 160 sub-sectors. Under this classification system, any service sector may be included in a member's schedule of commitments with specific market access and national treatment obligations. Telecommunications is dealt with as a sub-sector that comes under the sector of "communications".

Schedule (Articles XVI, XVII). These commitments are "bound", which means that they cannot be modified unless the concerned member enters into negotiations with other affected members. Any new measures that would further restrict entry into the market of the operation of the covered services will not be permitted. Hence, the schedules act as assuring documents where services suppliers of other countries are guaranteed that the conditions and operation in the market will not be changed to their disadvantages. In other non-selected sectors, there will be no market access or national treatment obligations (WTO, The GATS: objective, coverage and disciplines, 2008m).

However, even after agreeing about the schedules of specific commitments, a member still has the opportunity to modify a particular commitment or even eliminate it, provided that it must be prepared to offer alternative equivalent concessions. But, the withdrawal or modification of a commitment in the schedule can only be made after three years from the application of that particular commitment (Article XXI.1.a). The "modifying member" has to give a notice about its intention to the Council for Trade in Services at least three months prior to the date when it intends to make the modification or elimination (Article XXI.1.b). Members will then examine the notice and any member feels that its interests will be affected by the modified or withdrawn action it can request for a negotiation with the modifying member. The latter has the obligation to enter into negotiations with the affected member in order to arrive at an agreed "compensatory adjustment", which should be no less favourable than what was available earlier (Article XXI.2). Normally, the modifying member makes an offer of new commitments by including either new sectors in the schedule or new commitments in respect of existing sectors. The affected members have the right to accept the offer or refuse it. If the new commitment is accepted it will be included in the schedule of the modifying member and will be applicable not only to the affected members but to all members as the principle of MFN applies.

However, if the new commitment is not agreed about, the affected members may refer the matter to arbitration. But, if the affected members do not seek arbitration, the modifying member will be free to modify or eliminate its commitments as it is proposed in its notice (Article XXI.3). In case of arbitration, all affected members have to join in the arbitration, or they would lose the advantage of taking countermeasures. The decision of the arbitration is mandatory and final. The modifying member must introduce new alternative commitments in accordance with the findings of the arbitration. If the modifying member has carried out its modification or elimination without making compensatory adjustment in accordance with the

findings of the arbitration, the affected member will be free to modify or withdraw substantially equivalent benefits from the modifying member. But, the latter action will only be affected in respect of the modifying member and shall not be operated on an MFN treatment basis (Article XXI.4).

6.4.1.2. Horizontal commitments

In each schedule, commitments are divided into two categories; horizontal and sector-specific. Horizontal commitments are outlined in the first section of each schedule. They specify restrictions that apply to all sectors included in the schedule and they usually refer to a particular mode of supply, especially commercial presence and presence of natural persons.[19] Hence, it is not enough to understand commitments outlined under each specific sector, but also the horizontal commitments that generally apply to all sectors (WTO, Guide to reading the GATS schedules of specific commitments, 2008). Oman's horizontal commitments are outlined in Appendix (6.11), which stipulates that Oman limits the commercial presence of a foreign investor in any company established in Oman (mode 3 of service supply) to 70 percent equity -- 30 percent must be owned by Omani investors -- without any other requirement for a minimum capital starting from January 1, 2001. Oman also horizontally applies limitations on the movement of natural persons by restricting the entry and stay of business visitors[20] for a period of 90 days. In addition, the total number of personnel of a service supplier is limited to 20 percent; i.e. 80 percent of the employees must be Omanis. Furthermore, Oman prohibits the purchase of land and real estate by foreign companies or foreign individuals, but at the same time Oman is committed to allow service suppliers the right to 50 year renewable leases for land and buildings necessary to engage in service activities. Also, Oman horizontally conditions companies with foreign equity up to 70 percent to pay income taxes at the same rates as wholly Omani owned companies. But, if the foreign equity exceeds 70 percent, companies may be required to pay a higher rate of income tax than wholly Omani owned companies. As is indicated above, all these horizontal commitments apply to all sectors and sub-sectors that are included in the Schedule of Specific Commitments of Oman, unless it is otherwise indicated in the specific sector or sub-sector, as is the case in telecommunications, as explained below.

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[19] As is explained in Appendix (6.10), Article 1 of the GATS defines four modes of supply of trade in services; 1) cross-border trade, 2) consumption abroad, 3) commercial presence, and 4) presence of natural persons.

[20] Business visitors are persons who visit Oman for business purposes but their enterprises are not established in Oman.

6.4.1.3. Oman's specific-sector commitments on telecommunications

Unlike horizontal commitments, specific-sector commitments apply only to those outlined against each sector or sub-sector in Schedule of Specific Commitments. Telecommunications is dealt with as a sub-sector that comes under communication services (Altinger and Enders, 1996). Oman's schedule of commitments, as provided in Appendix (6.12), shows that Oman has made commitments to open up many different value-added[21] services and basic telecommunications[22] with virtually no restrictions on market access and national treatment (WTO, Coverage of Telecommunications Services, 2008j). This is attributed to the strong pressures Oman was put through when negotiating its accession to the WTO particularly from the U.S. and the EU (MOCI, 2001). The covered specific-sector commitments made by Oman are: voice telephone, packet and circuit switched data transmission, telex, telegraph, facsimile, mobile/cellular, payphone and calling card services, private leased circuit services which include data and internet services, electronic mail, voice mail, on-line information and data base retrieval, electronic data interchange, enhanced/value added facsimile services, code and protocol conversion, and on-line information and data processing including transaction processing.

Not only that, but Oman is also committed to allow the commercial presence (mode three) of wholly foreign owned telecom subsidiaries; i.e. without requiring any Omani shareholding, which goes even beyond the horizontal limitations. Thus, the horizontal limitation of restricting foreign ownership of a company incorporated in Oman to 70 percent will not be applicable to telecom sector. But, the horizontal commitments in regard to the 80 percent Omanisation condition, presence of natural persons (mode four), and income taxes as mentioned above are still applicable to telecom sector. Nevertheless, Oman has only applied restrictions on commercial presence in two telecom sub-sectors; namely audiovisual services[23], in relation to motion picture and videotape distribution only, and cinema ownership and operation. In the former the foreign equity is limited to 49 percent and to 51 percent in cases of cinema ownership and operation. It is worth-noting that the issue of liberalising audio-visual services is very controversial in the WTO as not many members agree to liberalise these services due to cultural and sovereignty reasons (see Geradin and Luff, 2004). However, these restrictions

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[21] Value added telecommunications services are where suppliers add value to the customer's information by enhancing its form or content or by providing for its storage and retrieval such as electronic data interchange, electronic mail, and on-line data processing.

[22] Basic telecommunications are any type of telecommunication services which involve end-to-end transmission of customer supplier information such as voice telephone service, telex, and facsimile services.

[23] Audio-visual services includes motion picture and video tape production and distribution services, motion picture projection service, radio and television services, radio and television transmission services, sound recording (WTO, 2008j).

cannot be applied under the FTA, as U.S. investors are permitted to have 100 percent ownership in these two sub-sectors.

6.4.1.4. The Annex on Telecommunications and the Reference Paper

Besides the main text of the GATS and the Schedule of Specific Commitments, Oman's telecom services are also subject to the rulings of the Annex on Telecommunications (AT) which acts as a complementary and explanatory document to the GATS[24] in respect of telecom. Under the Annex, Oman, as any other member, must ensure that all services suppliers such as banks, computer firms, and insurance companies that seek to provide services according to Oman's Schedule of Commitments are guaranteed access to and use of the public basic telecom, both networks and services. Oman must carry out this obligation on reasonable and non-discriminatory basis (Para 5.a, the AT). Hence, the Annex's obligations address access to these telecom services by users rather than the ability to enter the markets to sell these telecom services. The latter are addressed in schedules of commitments. Therefore, the beneficiaries of the disciplines in the Annex are firms that supply any of the services included in a member's schedule (WTO, Explanation of the Annex on telecommunications, 2008k). The Annex provisions shall apply to all measures of a member that affect access to and use of public telecom transport network and services (Para 2.a, the AT). But, the Annex does not apply to measures affecting the cable or broadcast distribution of radio or television programming (Para 2.b, the AT). Each member must ensure that information on conditions that affect access to and use of public telecom transport network and services is made available to the public. Such information shall include: tariffs, specifications of technical interfaces with public networks and services, details about bodies responsible for the preparation and adoption of standards affecting such access and use, conditions applying to attachment of terminal or other requirement, and notifications, registration or any licensing requirements (Para 4, the AT).

Similarly, the Reference Paper (RP) is another GATS document providing additional rules to telecom services. Initially, during the Uruguay Round (1986-1994), commitments in telecom services were concentrated on value added services such as electronic and voice mail or electronic data interchange. After that, negotiations were extended from 1994 to 1997 to cover basic telecom services resulting in what is known as the Agreement on Basic Telecommunications Services (ABTS) between sixty nine countries which entered into force on February 5, 1998 (WTO, History of the telecommunication negotiations, 2008n). The

[24] The GATS entails different annexes that contain specific provisions on telecommunications, financial, maritime transport, and air transport services. There is also an annex on Article II exemptions. These annexes constitute an integral part of the GATS (Article XXIX).

ABTS obliges its parties to include basic telecom services in their Schedules of Commitments. In order to ensure the effectiveness of these commitments, the ABTS stipulates more rules in relation to these services. These additional rules are included in the so-called "Reference Paper". The latter was named as such because its rules are integrated into the GATS by reference made to them in members' Schedules of Commitments. New members that have joined the WTO after 1998 such as Oman have to abide by the rules of the RP. Main provisions of the RP relates to measures such as interconnection, prohibiting anti-competitive safeguard measures, public availability of licensing criteria, independent regulators, and allocations and use of scarce resources (WTO, Telecommunications Services: Reference Paper, 1996b). An explanation of the main provisions of the RP as well as the AT is provided in the below-mentioned comparative analysis on how the telecom services are addressed under the FTA vis-à-vis WTO.

6.4.1.5. Future negotiations and consideration of developing countries

Although the inauguration of the GATS in the MTS is one of the most substantial developments of the system, it only marked an initial step for the future multilateral liberalisation of trade in services, and telecommunications is no exception. As is indicated in the analysis of the main provisions of the GATS (Appendix 6.10), Article XIX of the GATS requires members to launch new negotiations on services no later than five years from the date of entry into force of the Agreement and periodically after that. Consequently, a new round was launched in January 2000, with the aim of achieving a higher level of liberalisation of services trade, while *promoting the interests of all participants on a mutually advantageous basis and ... securing an overall balance of rights and obligations* (Article XIX.1). Thus, although Oman is a late-comer to the WTO, it can still participate in the shaping and making of the future development of the GATS, particularly when considering the fact that the GATS emphasises that developing and least-developed members shall be given special considerations in the negotiations in terms of their national objectives and levels of development.

As per the requirement of Article XIX.3, the Council for Trade in Services adopted in March 2001 Guidelines and Procedures for the Services Negotiations. The main elements of the negotiating Guidelines include a re-affirmation of the right to regulate and introduce new regulations on the supply of services, the objective of increasing participation of developing countries in services trade, and the preservation of the existing structure and principles of the GATS, including the listing of sectors in which commitments are made and the four modes of supply. Other new elements have also been added, such as explicit recognition of the needs of

small and medium-sized service suppliers, reference to the request-offer approach as the main method of negotiation, and continuation of the assessment of trade in services. Hence, Oman can play a part in these negotiations and seek to address its trade interests by coordinating with other developing countries of similar concerns.

The Doha Declaration (2001) confirmed, in paragraph 15, the Services Negotiating Guidelines and placed them into the overall timeframe of the Doha Development Agenda. The Doha Ministerial also affirms that conducting services negotiations shall aim at promoting economic growth of developing and least-developed countries. Initial requests for new or improved services commitments were to be submitted by June 30, 2002, with initial offers being due by March 31, 2003. The General Council also took a decision in the context of the so-called July Package of 2004 which set a target date of May 2005 for the submission of revised offers. Nevertheless, the services negotiations did not prove easy due to the diverse views and interests of WTO members. The Hong Kong MC attempted to provide new incentives to rehabilitate the negotiations and reaffirmed the objectives and principles of the previous steps taken towards further services liberalisation. The Hong Kong MC (2005) put more emphasis on allowing *appropriate flexibility* to individual developing countries as provided in Article XIX of the GATS. The Declaration also highlighted the importance of taking into account the *size of economies of individual Members, both overall and in individual sectors* in the negotiations. The Declaration also made special reference to the economic situation of the least-developed countries and *acknowledge that they are not expected to undertake new commitments*. It urged all members to intensify the negotiations and with a view to *expanding the sectoral and modal coverage of commitments and improving their quality* with special focus should be given to sectors and modes of supply of exports of developing countries. Thus, Oman can participate more effectively in these ongoing negotiations by cooperating with other developing countries of similar interests such as the GCC countries. However, this policy choice available for Oman under the multilateral WTO approach is not present under the bilateral approach of the FTA. Under the FTA, Oman's services commitments, including telecom, are locked-in. Oman is further obliged to abide by the very strict rules and inflexible provisions of chapter thirteen of the FTA that it never participated in their making, as is demonstrated in the analysis below.

6.4.2. Oman's telecommunications sector under the FTA

The main chapter that deals with telecom services in the FTA is chapter thirteen. Due to its complexity, the comparative analysis between the FTA and WTO arrangements on telecom

services is conducted in separate Appendices 6.13, 6.14, and 6.15 as is categorised in table (6.1) below.

Table (6.1): Main areas of the analysis of telecoms under the WTO and the FTA

Appendix no	Category	Areas of analysis
Appendix (6.13)	Similar commitments under the two trading approaches but stricter and more detailed under the FTA.	Access to and use of public telecom services (PTS), interconnections, anti-competitive safeguards, unbundling of network elements, provisions and pricing of leased circuits services, independent regulatory body, licensing progress, allocation and use of scarce resources, dispute settlement, transparency, cross-border trade in services, and local presence.
Appendix (6.14)	Additional commitments under the FTA that do not exist in the WTO	Resale of telecom services, number portability, dialing parity, treatment by major suppliers, co-location, access to poles, ducts, conduits, and rights-of-way, submarine cable systems, conditions for the supply of value-added services, government ownership, enforcement, and choice of technology.
Appendix (6.15)	Exceptions from the obligations of chapter thirteen of the FTA	Supply of telecom services in rural areas and supply of commercial mobile services.

Source: Complied by the author (2008).

The analysis reveals that the FTA contains obligations that are similarly required to abide by under the WTO. These include, for instance, the obligations of: 1) allowing telecom suppliers of the other party access to and use of public telecom services on non-discriminatory basis, 2) allowing services suppliers of the other party such as banks and insurance companies to interconnect into the facilities and equipments of suppliers of public telecom services, and 3) establishing an independent regulatory body. However, in all of these obligations, the FTA applies more strict details and conditions than those of the WTO. These conditions oblige Oman to provide U.S. suppliers with even more favourable treatment than what is accorded to other WTO members (Appendix 6.13). For instance, Article 13.13 of the FTA and paragraph 4 of the RP require members/parties to make conditions about access to and use of public telecom networks and services publicly available. But, Article 13.13 goes beyond this requirement and obliges parties to provide interested persons with an advance public notice about any proposed rulemaking that the regulatory authority intends to adopt and allow them to comment on the proposal. These are strict provisions that would enable U.S. suppliers to interfere in the process of rulemaking of telecom sector in Oman. These additional obligations do not exist in the WTO (see Appendix 16.13 for more examples).

Not only that but under the WTO, Oman, as per paragraph 5 of the AT, does not have to be fully committed to the above obligations but may apply exceptional conditions, as safeguard

measures, such as restrictions on resale or requiring specific technical interfaces, including interface protocols for interconnection with public network, or applying specific conditions for inter-operability of telecom services. These conditions may be applied to achieve different objectives such as: guaranteeing that the responsibilities of suppliers to provide public telecom transport networks and services are safeguarded, or protecting the technical integrity of public telecom transport networks or services. However, undertaking these exceptions is not permitted under the FTA.

Also, although Oman has agreed to full liberalisation of its telecom services due to pressures from developed countries that negotiated Oman's accession to the WTO, chapter thirteen of the FTA adds even more new obligations on Oman to further open up different elements of its telecom sector for U.S. investors. Many of these aspects do not exist in the WTO. Examples of these aspects are: resale of public telecom services, number portability, dialing parity, co-location, access to poles, ducts, conduits, and rights-of-way (Appendix 6.14). Hence, not only does the FTA lock-in Oman's liberalisation commitments of its telecom sector, but it further obliges Oman to go beyond these commitments and provide special preferential treatment for U.S. investors that may not necessary be guaranteed to other foreign suppliers working in Oman.

Furthermore, there are other additional commitments in the FTA that may create even more serious pressures on Oman. For instance, Article 13.7.3 prohibits both parties from according;

> more favorable treatment to a supplier of public telecommunications services or to a supplier of value-added services in its territory than that accorded to a like supplier of the other Party on the basis that the supplier receiving more favorable treatment is owned, wholly or in part, by the national government of the Party.

This Article clearly implies that the Government of Oman is prohibited from according more favourable treatment to the national telecom supplier, Omantel, than what is accorded to U.S. suppliers. Hence, it is not enough that the Government of Oman must guarantee U.S. suppliers non-discriminatory access and use of public network controlled by Omantel with all the other WTO plus commitments, but any favourable policy made by the Government to Omantel can be seen as a breach of Article 13.7.3. This is a very strict and difficult commitment that does not exist in the WTO. The Government of Oman is the dominant owner of Omantel by 70 percent and four out of its six board members are representatives of the Government. Thus, decisions and policy making of the company are determined by the Government which ultimately seeks to improve the efficiency and competitiveness of the company in which it

holds the major shareholding. Hence, it is very natural that these decisions and policies will be more favourable to Omantel.

It is important to note that the above-mentioned commitment of Article 13.7.3 is different from the obligations of Articles 13.7.1 and 13.7.2 which provide regulations about the separation and impartiality of the work of "telecommunications regulatory body" of each party. According to Article 13.7.1, the Government of Oman must ensure that the Telecommunications Regulatory Authority (TRA) does not have any financial interest or maintain any operating role in any of telecom suppliers in Oman such as Omantel or NAWRAS (Article 13.7.1). If the Government itself holds any financial interests in any telecom services suppliers as is the case with Omantel where the Government owns 70 percent, the Government must ensure that such interests do not influence the decisions and procedures of the TRA (Article 13.7.2). But these commitments are different from that of Article (13.7.3) which prohibits the Government of Oman from providing any special favourable treatment to Omantel different from what is accorded to U.S. telecom suppliers.

Even more surprisingly, Oman, as per Article 13.7.4 of the FTA, is required to eliminate as soon as possible the Government ownership in Omantel and must inform the U.S. Government about the time of its intention to do so. This is not only a WTO plus commitment, but it is also a direct intervention in the economic policy making of the Government of Oman. Moreover, Article 13.4.1 of the FTA obliges Oman to ensure that its major telecom supplier, Omantel, provides U.S. suppliers equal and non-discriminatory treatment to what is accorded to its subsidiaries or affiliates such as Oman Mobile, Oman Fiber Optic, and Infoline company[25], or even non-affiliated service suppliers such as NAWRAS in regard to the availability, provisioning, rates, or quality of like public telecom services and the availability of technical interfaces necessary for interconnection. This is another WTO plus commitment that Oman must abide by under the FTA. It is important to emphasise that this commitment is substantially different from paragraph 5 of the AT. Although the latter obliges members to permit foreign services suppliers to access and us the public telecom services on reasonable and non-discriminatory terms, it does not prevent any major supplier from adopting favourable policy towards its own subsidiaries or affiliates.

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[25] Oman Mobile is engaged in the establishment, operation, maintenance, and development of mobile telecommunications services. Omantel has 99% shareholding in Oman Mobile. Oman Fibre Optic (OFOC) is engaged in the manufacture and design of optical fibre and cables, which are mainly used for telecommunication services. OFOC sells its products locally and to international telecommunication operators. Omantel has 25.69% shareholding in the company. Infoline is engaged in the provision and management of call centre services. Omantel has 45% shareholding in this company (Zawya, 2008a).

Furthermore, Omantel, as per Article 13.4.7.a, is obliged to provide, on non-discriminatory and reasonable terms, an empty space from its own premises to U.S. suppliers where they can install, maintain, or repair their equipments used for interconnections. This is termed as "co-location" obligation under the FTA. If it appears that Omantel cannot provide co-location on its premises for U.S. suppliers either because of space limitations or for any other technical reasons, Omantel must provide another alternative co-location or find an alternative solution. This is another additional commitment that does not exist in the WTO.

In addition, as per Article 13.5, Omantel must permit U.S. services suppliers to access its submarine cable system on reasonable and non-discriminatory treatment. Omantel has invested US$ 39 million in the FLAG Telecom project through which the FALCON undersea fibre optic loop cable system will be launched to connect various countries and cities in the Middle East, Africa, and Asia (Flagtelecom, 2004). The Gulf loop and east and west links will interconnect at two landing stations in Oman; Seeb and Khasab. Omantel has also purchased capacity of international connectivity on the FALCON system. Thus, once completed, this project will make Oman a traffic hub for carrying traffic across Middle East and the Indian subcontinent. Under the WTO, there is no commitment that obliges Omantel to allow telecom services suppliers of other members accessing its submarine cable system. But under the FTA Omantel must provide U.S. telecom suppliers with the right to access this system, although they have not made any actual investment in the system. Also, according to Article 13.4.8 of the FTA, Omantel must guarantee U.S. suppliers an access to its owned or controlled poles, ducts, conduits, and rights-of-way, on non-discriminatory and reasonable terms and conditions. This is another WTO plus commitment guaranteed for U.S. telecom suppliers despite not having made any tangible investment in the construction of telecom networks and facilities in Oman.

More noticeably, Annexes 13-A and 13-B of the FTA exempt telecom suppliers of both Oman and the U.S. in rural areas from some of the obligations of chapter 13. However, the study finds out that the FTA guarantees more exemptions to the U.S. than Oman, which demonstrates the U.S. protectionist stand to its local suppliers. For example, under Annex 13-A, telecom services supplied in rural areas in Oman are exempted from two obligations only; namely, "resale and number portability". However, U.S. rural local exchange carriers are also exempted from these two obligations as well as from the obligation of "dialing parity". But, in case of Oman, there is no exemption made in relation to the obligation of "dialing parity". This implies

that Oman must ensure that Omantel which supplies public telecom service in rural areas must provide "dialing parity" services to U.S. suppliers and grant them non-discriminatory access to telephone numbers, directory assistance, directory listing, and operator services with no unreasonable dialing delays.

Moreover, under Annex 13-B, the obligations of "resale, unbundling networks element, provisioning and pricing of leased circuits services, co-location, and access to poles, ducts, conduits, and rights-of-way"[26] of Articles 13.4 do not apply to telecom services supplied in rural areas in Oman. However, rural local exchange carriers and rural local telephone companies in the U.S are not only exempted from these obligations, but also from all other obligations listed in Article 13.4, as is explained in Appendix (6.15).

Furthermore, even with the few exceptions made in the case of rural areas of Oman, the permission of applying these exceptions is made subject to the very strict definition of the meaning of "rural areas" in Oman. This implies that if the specifications provided in this definition are not met, Oman's telecom suppliers may not be able to benefit from the outlined exceptions. Firstly, a "rural area" applies to any community that was not yet supplied with telecom services by Omantel as of January 2005. This implies that telecom suppliers in any rural area that had received telecom services before January 2005 will not be able to benefit from the exemptions. Secondly, the community of the rural area does not have a total population of more than 1,000 inhabitants. This implies that if the number of inhabitants exceeds 1,000, the telecom suppliers in the rural area will not be able to take an advantage of the exemptions. Thirdly, the community of the rural area does not have a fixed telephony penetration rate of more than ten percent of the population. Thus, if the fixed telephony penetration rate exceeds 10 percent of the population, the telecom suppliers in the rural area will not benefit from the exceptions. Ironically, however, in the case of the U.S. there are no such definitions or specifications required for rural areas. Thus, while the FTA seeks to provide the U.S. with all possible means to protect its own domestic telecom suppliers, it has restricted Oman's ability to do so, so that the Omani telecom market would stay favourably open for U.S. telecom suppliers.

Similarly, Annexes 13-A and 13-B exempt commercial mobile services from some of the obligations of chapter 13 of the FTA. However, it appears that these exemptions are higher in the case of the U.S. than in Oman, which again demonstrates the U.S. resort to protectionism

[26] These obligations are provided in paragraphs 3,4,6,7, and 8 of Article 13.4 respectively.

whenever possible. To elaborate, under both Annexes 13-A and 13-B, the only exemption provided for Oman with respect to commercial mobile services is "resale". This means that Oman can apply discriminatory conditions and limitations against U.S. suppliers regarding resale of commercial mobile services. However, the exemptions accorded to the U.S. with respect to mobile commercial services far exceed what is given to Oman. Firstly, Annex 13-A exempts the U.S. from abiding by conditions of "resale, number portability, and dialing parity" with respect to suppliers of commercial mobile services, while Oman is only permitted to exempt the obligation on "resale". This means that Oman must still abide by the obligations of number portability and dialing parity with respect to commercial mobile services, while the U.S. is exempted from such obligations. Secondly, the U.S. is exempted from abiding by all the obligations of Article 3.4 with respect to commercial mobile services. These obligations are namely; non-discriminatory treatment by major suppliers, probation of anti-competitive safeguards, unbundling of network elements, interconnection, provisioning and pricing of leased circuits services, co-location, access to poles, ducts, conduits, and rights-of-way. Ironically, Oman is obliged to abide by all the conditions provided in these obligations, with the sole exceptions of resale, but the U.S. can entertain full exemption from abiding by all these obligations in regard to commercial mobile services suppliers. Because of all these findings, multilateral arrangements are more flexible and better serve the interests of Oman than the FTA in respect of telecom services.

6.4.3. Policy implications

Under both the WTO and the FTA Oman is committed to open its telecom sector for foreign suppliers. However, this commitment is much wider under the FTA than the WTO. Due to pressures from the U.S. and the EU who negotiated Oman's accession to the WTO, Oman had to go beyond its horizontal commitments and allow wholly foreign owned telecom subsidiaries. However, this pressure continued under the FTA and resulted in obliging Oman to meet far more strict provisions than is the case under the WTO. Some of these obligations are not even incorporated in the WTO legal system. The on-going multilateral negotiations on the GATS still provide Oman with the opportunity to express its interests and concerns in the telecom sector and unite its negotiating position with other countries of similar interests. Perhaps, as a late-comer that was obliged to make many liberalisation commitments in services, Oman may seek to build negotiating coalitions with the so-called recently acceded members (RAM). As is the case of Oman, these members joined the WTO in recent years and made far more obligations than other members, such as China and Saudi Arabia. Nevertheless, such opportunities are not available under the FTA which does not only cement Oman's WTO

commitments to open its telecom market, but obliges Oman to new additional commitments that other WTO members are exempted from. Because of all these findings, the WTO arrangements are more flexible for Oman than the FTA and Oman has better policy choices under the WTO multilateral approach than the bilateral FTA approach.

6.5. Investment

6.5.1. Multilateral arrangements

Attracting foreign investment has been an important policy for Oman, particularly for the last two five-year economic plans. In 2005, foreign direct investment (FDI) in Oman reached a value of OR1622.5 million; registering a sharp increase from the year before by OR676.7 million. This number further jumped to OR2260.2 in 2006 (MNE et al, 2008). Most of the FDI concentrated in oil and gas, manufacturing, and financial intermediation and came from a diversified list of countries including the U.K., the UAE, the U.S, India, Kuwait, Qatar, and different other countries (see table 6.2 below).

Table (6.2): Foreign direct investment in Oman for the period 2002-2005

Million. OR.	2003	2004	2005	2006
Foreign Direct Investment (total)	929.4	945.8	1622.5	2260.2
FDI by industry				
Oil and gas	445.3	425.2	688.6	935.5
Financial intermediation	122.2	144.8	303.6	364.9
Utility and construction	78.3	94.8	134.3	179.9
Trade	41.5	40.9	92.6	119.2
Manufacturing	185.6	144.6	280.7	418.1
Real estate	17.1	25.8	48.7	99
Other	39.4	69.6	74	143.6
FDI by Country of Origin				
United Kingdom	357.4	390.4	536.2	652.7
United States	107.3	99.8	102.9	298
India	74.5	75.6	112	111.5
Kuwait	14.2	17.9	64.7	107.6
United Arab Emirates	68.5	75.5	213.4	372.1
Qatar	6.3	6.4	72.4	88.2
Others	301.2	280.2	520.9	630.1

Source: MNE et al (2008, pp.24, 30, 34). Foreign Investment: Statistical Bulletin: 2005-2006.

Similarly, Oman, as part of its diversification objectives, has sought to increase its direct investments abroad, which reached OR416.1 in 2005 and then increased to OR584 in 2006. But these numbers do not match the FDI that came to Oman during the same period, as explained above. Much of Oman's direct investments abroad concentrated in countries such as the UAE, Russia, and Bahrain and in sectors such as financial intermediations, oil and gas, and transport-storage. The U.S. was not an important destination for Oman's investment (see table 6.3 below).

Table (6.3): Oman's direct investment abroad for 2005-2006

Million. OR.	2005	2006
Oman's direct investment abroad (total)	416.1	584
Oman's investment abroad by sectors		
Financial intermediation	178.6	236.7
Oil and gas	116.1	198.8
Transport-Storage & Communications	83.7	96.9
Real estate	16.7	28.1
Trade	11.1	12.7
Manufacturing	4.5	5.4
Construction	5.4	5.4
Oman's direct investment by country of destination		
United Arab Emirates	121.6	159.2
Russian Federation	66.8	73.7
Bahrain	46.1	64.5
Panama	53.6	60.1
India	29.4	59.9
China	0.0	52
Others	98.6	114.6

Source: MNE et al (2008, pp.60, 61, 64). Foreign Investment: Statistical Bulletin: 2005-2006.

Under the WTO, there is no agreement specifically dealing with "investment", but the issue is addressed via three main elements namely, the Agreement on Trade-Related Investment Measures (TRIMS Agreement), the relationship between trade and investment as one of the so-called Singapore issues, and foreign investment in services as one of the four modes of supply of the GATS.

6.5.1.1. Trade-Related Investment Measures Agreement

Oman, as the rest of WTO members, must abide by the rulings of the Trade Related Investment Measures Agreement (TRIMs) which came into effect on January 1, 1995 as part of the results of the Uruguay Round negotiations (WTO, Understanding the WTO, 2005a). The TRIMs Agreement covers conditions on investment related to trade in goods only. Any other measures that do not fall under trade in goods are not covered by this Agreement. However, the TRIMs Agreement is only an explanatory document to Articles III.4 and XI.1 of the GATT, which both call for non-discriminatory actions against imported products. Article III.4 conditions that the treatment accorded to an imported product must not be less favourable than that accorded to a like domestic product in respect of laws and regulations affecting sale, purchase, transportation, distribution or use. Article XI.1 prohibits non-tariff restrictions on the import or export of goods. Hence, the TRIMs came about to outline the prohibited measures as required by Articles XI.1 and III.4, reaffirms their prevention, and further stipulates procedures for monitoring the obligations of WTO members. These prohibited measures were agreed about by

all WTO members and are listed in the Annex to the TRIMs Agreement. Their prevention is obligatory and must be enforced via domestic laws of WTO members (Article 2). The Committee of the TRIMs is responsible for monitoring the operation and implementation of the Agreement. The Committee is open to all members and reports to the Council for Trade in Goods (Article 7).

Measures that are inconsistent with Article III.4 entail: specifying that particular products, or a particular volume or value of some products, of domestic origin must be purchased or used by an enterprise, or conditioning that an enterprise must purchase or use domestic products at least up to a particular proportion of the volume or value of the local production of the enterprise, or restricting the purchase or use of an imported product by an enterprise to an amount related to the export of its local production. Measures that are inconsistent with Article XI.1 entail: imposing a general restriction on the import of inputs by an enterprise or restricting the import of inputs to an amount related to the export of its local production, or restricting export by an enterprise by specifying the restricted products, or the restricted volume or value of products, or the restricted proportion of its local production.

Although every member must abide by the obligations of the TRIMs Agreement, there are some exceptions specifically provided for developing countries. The first is Article XVII.b of the GATT which permits developing countries to use tariffs to reduce imports if they have experienced difficulties in their balance of payments and which result in a low foreign currency reserve, provided that the reduced imports shall not exceed *those necessary to forestall the threat of, or to stop, a serious decline in its monetary reserves, or,...to achieve rate of increase in its reserves*. However, once a product is imported it will have to be treated equally with domestic products. Secondly, whereas developed countries were given two years to eliminate all their restrictive measures starting from 1 January 1995, developing countries were given five years and least developed countries were given seven years. If a developing country member, or a least developed country, faces particular difficulties in eliminating these measures according to the allocated time it may request for an extension of the time. The Council for Trade in Goods will consider this request, taking into account the individual development, financial and trade needs of the member and may extend the time (TRIMs Agreement, Article 5.2,3). According to the Department of Industry and Trade (2001) in the U.K., subsequent to the expiry of the transition period, ten members were granted extensions (see Appendix 6.16).

6.5.1.2. Trade and investment as one of the "Singapore Issues"

Developed countries argue that trade and investment have become increasingly complementary and inter-connected. Much of the FDI involves trade and an average larger share of global trade has become intra-firm, involving exchanges between related enterprises. One third of the $6.1 trillion total of world trade in goods and services in 1995 was trade within companies such as between subsidiaries in different countries or between a subsidiary and its headquarters (WTO, 2007q). Thus, developed countries argue for the need to negotiate multilateral rules for investment policies such as the right of establishment and national treatment for foreign investment (Hoekman and Kostecki, 2001). As a result, WTO members at Singapore MC (WTO, 1996a) decided to establish a working group to examine the relationship between trade and investment. The Singapore MC clarified that any multilateral discipline on the issue will only take place after an explicit decision among WTO members. The Doha Ministerial Declaration (WTO, 2001) re-emphasised, in paragraph 20, the importance of finding a multilateral framework for a coherent long-term agreement on cross-border investment, characterised by *transparent, stable and predictable conditions*. The Doha Declaration announced that negotiations on this issue would take place after the Fifth MC in Cancun on the basis of a decision to be taken by explicit consensus. The Doha Declaration recognised the needs of developing and least developed countries for technical assistance and capacity building in promoting their investment policies. Thus, in order to provide adequate resourced assistance, the WTO would work in co-operation with other intergovernmental bodies such as UNCTAD and regional and bilateral channels.

However, there appear to be different and conflicting views between developing and developed countries about the types of issues that should be incorporated in the newly proposed agreement on investment. The U.S. proposed that any multilateral agreement on investment should be based on all forms of investment; local, foreign, and portfolios. Such a wide opening would lead to a more efficient use of international economic resources and enable developing countries to receive sufficient capitals for their development. The U.S. also called for the adoption of a "negative list" approach where all members should open up all services for foreign investments except those included in specific schedules of each member (Zarooq, 2001, 2003).

Nevertheless, most developing countries took an unenthusiastic position towards the adoption of a separate multilateral agreement on investment. India, Brazil, and Egypt criticised the U.S. proposal for being designed to only serve the interests of U.S. transnational corporations. They

were concerned that a separate multilateral agreement on investment would restrict their ability to determine their own investment policies, such as the choices of types and conditions for foreign investment, including entry requirements, equity requirements, performance requirements and regulations on financial transfers (Zarooq, 2001, 2003). More specifically, India argued that there exist enough measures in the WTO legal system that deal with foreign investment and ensure its protection and non-discriminatory treatment. These measures could be found in the TRIMS Agreement and GATS. India further argued that there is no enough evidence that establishing a new multilateral agreement on investment would lead to more and better flow of investments that would work for the benefit of developing countries (Zarooq, 2001,2003).

Many Arab countries held a consultative meeting in July 2001 in Cairo, to prepare for the Doha Ministerial. They collectively agreed that any new multilateral agreement on trade and investment, if ever happened, should take into account certain factors that are important for their economic development such as that the new agreement should be in a similar format of the GATS; i.e. based on the four modes of supply, put serious consideration on the economic development of Arab countries, allow for imposing performance conditions, guarantee financial and technical assistance, and lead to transferring technology and increasing job opportunities (Zarooq, 2001,2003). As a result of the disagreement between developed and developing countries, the text of the July Package, which was adopted on August 1, 2004 by the WTO General Council, suspended any further negotiations on investments as well as other Singapore issues; competition and transparency in government procurement (WTO, the July Package, 2004).

6.5.1.3. Investment as part of the four modes of supply of the GATS

The General Agreement on Trade in Services (GATS) is linked to investment via mode three of services supply, which is about the "commercial presence" of foreign investors of one member in the territory of another member. However, it is important to emphasise that the GATS is not an investment agreement and, thus does not contain provisions to protect the FDI (Ortino and Sheppard, 2006). The GATS is mainly concerned about market access of services and deals with the FDI as one of the means through which services are provided. Also, the GATS does not contain a mechanism for dispute settlement where foreign investors can resort to in cases of disagreements.[27]

[27] An analysis on the main provisions of the GATS is provided in appendix 6.10.

According to its schedule of commitments annexed to the GATS[28] and based on a positive list approach, Oman is specifically committed to open twelve services sectors. These are communications, insurance, banking and finance, sea transport, professional services (such as legal services, accounting and audits), technology related services, management consultancy and advertising, establishment or construction, education, health and enrollment, distribution services, and finally some voice and vision services (WTO, Oman's Schedule of Specific Commitments, 2000b). Thus, Oman is committed to allow foreign suppliers to invest in Oman in these sectors either by establishing commercial presence in Oman (mode three) or through cross-border supply (mode one). According to Mohammed Saleem[29] (n.d, p.7), there was *tremendous pressure* exercised on Oman by the U.S. and other developed countries during its accession negotiations to allow foreign commercial presence up to 100 percent equity in all these sectors without any limitations on the type of legal entity for establishing commercial presence. Oman sought very hard to provide some safeguards for its domestic businesses and finally agreed to allow foreign equity of 70 percent. As a result, foreign suppliers may set up presence in Oman in the form of joint-venture companies, with Omani share to be at least 30 percent. This is thought to be best for the continuous development of national industries which can still benefit from the 30 percent shareholding with other foreign companies, learn from their experiences, and secure some market shares (Fulaifil, 2000, p.46).

Furthermore, in certain sensitive sectors, Oman managed to restrict foreign equity to a much lower level, so that local industries can maintain their competitive position. On the other hand, however, Oman agreed to allow either branch offices or wholly-owned foreign subsidies in sectors that are of importance for the U.S. and other developed countries such as telecommunication, banking, insurance, computer and other financial services (see table 6.4 below). Also, as is already indicated above, Oman succeeded, albeit with difficulties, in convincing the WTO negotiating team to agree that 80 percent of the total workforce of any services suppliers in Oman to be Omani nationals. This was regarded by the Omani negotiating team as a *successful achievement* (see Fulaifl, 2000, p.47).

Table (6.4): Omani services sectors where foreign ownership is less than 70 percent or 100 percent

The sector	Foreign ownership
Motion picture and videotape distribution services	49 %
Cinema ownership and operation	51 %
Restaurants	49 %
Selling and marketing of air transport services	51 %

[28] Given the absence of a separate multilateral agreement on investment, and the clear interrelation between services and investment; Oman's special commitments under the GATS are relevant to this analysis.
[29] Mohammed Saleem is an expatriate advisor to the MOCI on trade agreement issues.

Computer reservation services	51 %
Storage and warehouse services	51 %
Building cleaning and packing services	51 %
Computer and related services	100%
Telecom services	100%
Banking services	100%
Insurance services	100%
Other financial services (securities)	100%

Source: WTO (2000, pp.2-18), Report of the Working Party on the Accession of Oman to the WTO.

6.5.2. Investment under the Oman-U.S. FTA

Unlike the WTO where there is no separate coherent agreement on "investment", chapter ten of the Oman-U.S. FTA is dedicated to deal with this issue. While Oman, as many other developing countries, collectively managed to overcome the wishes of developed countries to initiate a multilateral agreement on "investment", Oman is obliged to abide by the very comprehensive chapter of the FTA on investment. While the opportunity under the WTO is still available for Oman to address its concerns on the issues of investment and GATS, unite its negotiating position with other developing countries, and benefit from the technical assistance of the organisation, such opportunities are not available under the FTA. Under chapter ten of the FTA, all forms of investment must be permitted, except where is otherwise provided. The chapter is comprehensive in scope, complicated in nature, and does not contain special considerations for developing countries as is the case under the WTO. Chapter ten highly interlinks with chapter eleven on cross-border trade in services, chapter twelve on financial services, and chapter thirteen on telecommunications. In all these chapters, Oman's commitments interlink with those of the investment chapter, which all go beyond those specified in Oman's Schedule under the GATS. The remaining of this section analyses the main provisions of chapter ten of the FTA by focusing on three main aspects; coverage and non-discriminatory obligation, non-conforming issues as stipulated in Oman's schedules, and dispute settlement.

6.5.2.1. Coverage and non-discriminatory obligation

Provisions of chapter ten apply to all measures that are adopted or maintained by a party in regard to investors of the other party in covered investments (Article 10.1). As per Articles 10.3 and 10.4, Oman is obliged to provide U.S. investors the same treatment it provides to its domestic investors (national treatment) and to investors of other countries (MFN treatment) with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale of other disposition of investments in Omani territory. U.S. investors may own up to 100 percent of the equity of any enterprise established in Oman. Thus, Omani investors will have to compete against U.S. corporations on equal footing in almost all sectors, except where it is otherwise

stated in Oman's Schedules in Annexes I, II, and III. The safeguard position of protecting local firms that Oman managed to achieve under the WTO is substantially lost under the FTA.

Also, the big achievement of the 80 percent Omanisation was renegotiated under the FTA. Oman had to undergo through another additional pressure from the U.S. on top of the pressure that the U.S. and other developed countries had exercised when negotiating Oman's accession to the WTO. Consequently, Oman had to agree with the U.S.' wishes for allowing U.S. managers, professionals, and specialty personnel not to be subject to the 80 percent Omanisation requirement. These are important positions that can be occupied by qualified Omanis. Even if, for the sake of argument, there are no enough qualified Omanis for these positions, plans can be adopted to educate and qualify Omanis to occupy them. However, with this relinquishment to the U.S., only low and middle level jobs will have to be filled by Omani nationals. Not only that, but even in those low and middle levels, U.S. investors, according to paragraph 3 of Annex 11.12 to the FTA, may employ non-Omani nationals if qualified Omanis cannot be located for the relevant position. This exception implies that U.S. investors may escape from their multilateral obligations of employing 80 percent Omanis, by claiming that qualified Omanis are not available in the market. If this exception does not exist, U.S. investors would have been obliged to train and qualify Omanis to meet the 80 percent requirements. But, the FTA has exempted the U.S. from this obligation. Foreign investors from other countries may ask Oman to provide them with similar relinquishment. Because of that, Oman has better policy choices under the multilateral WTO approach than the bilateral FTA approach.

Furthermore, Oman is obliged to provide U.S. covered investments established in Oman with *fair and equitable treatment*, *full protection and security*. Also, Oman must treat U.S. investors un-discriminatorily with respect to measures relating to losses suffered by any U.S. investment in Oman's territory due to *armed conflict or civil strife* (Article 10.5). If these losses are the result of requisitioning of the investment or its destruction, Oman must provide the suffered investors restitution, compensation, or both, for such losses. Article 10.6.1 prohibits expropriation or nationalisation of a covered investment of either party, except if such actions are taken un-discriminatorily for a public purpose and *on payment of prompt, adequate, and effective compensation*. Article 10.6.2 emphasises that the compensation must *be paid without delay, be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place, and be fully realizable and freely transferable*. Article 10.7 obliges parties to allow free transfers relating to a covered investment such as capital, profits, dividends, interest, and other types of payments. Such transfers shall be freely made in useable currency at

the market rate of exchange prevailing at the time of transfer. But, the Article outlines certain conditions under which a party may prevent a transfer such as; bankruptcy, protection of creditors' rights, criminal or penal offences, and protecting the rights of creditors.

Article 10.8 prevents both parties to oblige investors of each other to fulfill certain performance requirements such as; a) to export a given level or percentage of goods or services, b) to achieve a particular level or percentage of domestic content, c) to purchase or use goods produced in its territory, d) or relate the volume or value of imports to those of exports, e) to transfer a particular technology, or a production process, and f) to supply exclusively from the territory of the party the goods that such investment produces or the services that it supplies. Most of these prohibitions are made under the TRIMs Agreement. But, the latter only applies to goods, which means that members under the WTO can impose performance restrictions on services, unless it is stated otherwise in their schedules of commitments under the GATS. Under the TRIMs there are certain exceptions for developing countries that are not found in the FTA. Also, the FTA's prohibition of transferring a particular technology or a production process is not included in the TRIMs. This implies that Oman under the WTO may condition transferring a particular technology for an investment to be established in its territory, but cannot do so under the FTA. Article 10.9 of the FTA prohibits both Oman and the U.S. from obliging a covered investment in their territories to appoint natural person from a particular nationality to senior management positions, except as otherwise stated in Oman's schedules in Annexes I, II, and III to the FTA. However, a party can still require that a majority of the board of directors, or any committee, of a covered investment to be of a particular nationality or resident in the territory of the party, provided that the requirement does not *materially impair the ability of the investor to exercise control over its investment.*

6.5.2.2. Non-coverage: negative list approach

Article 10.12 stipulates that Articles 10.3 (national treatment), 10.4 (MFN treatment), and 10.9 (senior management and boards of directors) do not apply to measures that are specified, on a negative list basis, in each party's schedules of Annexes I, II, and III[30] to the end of the Agreement. Hence, all types of sectors and services are subject to the provisions of chapter ten except those listed - on a negative list basis - in each party's schedules. Thus, Oman had to define specific elements of investments and services where it thought important not to liberalise or necessary impose some restrictive conditions. The MOCI (2006c, p.10) describes Oman's non-

[30] Annexes I and II contain the non-conforming measures in relation to investment (chapter ten) and cross border services (chapter eleven.) and Annex III entail the non-conforming measures in relation to financial services (chapter twelve)

conforming measures as "sensitive" *where U.S. investors may be barred from making investments*. However, the analysis demonstrated in Appendix (6.17) on the non-conforming measures listed in Oman's schedules does not support the MOCI's claims. Many of the excluded services such as printing, publishing, retail photographic, retailing, taxi transportation, in the view of the researcher, are not as "sensitive" as those services which are made subjects to the FTA obligations. The situation under the WTO, on the other hand, is more flexible with the usage of the positive list approach where only those services listed in Oman's schedules of commitments under the GATS are liberalised. Any other non-listed services are not subject to liberalisation.

6.5.2.3. Dispute settlement under chapter ten of the FTA

Under the WTO there exists only one comprehensive system of dispute settlement, through which all disputes are addressed, the rights and obligations of members are maintained, and multilateral rules are enforced. However, under the FTA, although there is a separate chapter on dispute settlement (chapter twenty), chapter ten on "investment" contains its own special dispute settlement mechanism of substantially different steps to those of chapter twenty that start from "consultations", to "arbitration" and formation of "tribunal", then to decision of "tribunal", and enforcement of the tribunal decision; thus making the dispute system under the FTA less unified and more complicated than is the case under the WTO.

In addition, under the WTO, disputes take place between members; i.e. governments, and does not involve private enterprises. When a private firm feels that its business activities or products are affected as a result of another foreign firm's breach of the WTO rules, it first has to convince its government about the validity of its case. If convinced, the government takes the case to the dispute settlement system of the WTO and acts as the "complaining party" on behalf of the private firms in the dispute. Hence, the ultimate responsibility for settling disputes lies with member governments, not private firms. This is also the case under chapter twenty of the FTA. Nevertheless, investment disputes under chapter ten of the FTA can entail private firms (the claimant) from one of the parties against the government of the other party (the respondent)[31]. This has serious implications for the Government of Oman which will have to face any dispute raised by any of the U.S. companies. Appendix (6.18) summerises the main steps of the dispute settlement as outlined in section B of chapter ten starting from negotiations and consultations, to the arbitration process, and then to the decision of the tribunal. The latter can oblige the

[31] This is clear from the definitions provided in Section C of chapter ten of the FTA. The term "disputing parties" means the claimant and the respondent. The "claimant" means *an investor of a Party that is a party to an investment dispute with the other Party*. The "respondent" means *the Party that is a party to an investment dispute*.

"respondent" to pay the enterprise (the claimant) monetary damages and any applicable interest. A tribunal decision can also be in form of restitution of property. A tribunal may also award costs and attorney's fees. The "respondent" must abide by the tribunal decision. If it fails to do so, the "claimant" may seek different alternatives to enforce the tribunal decision, as is elaborated in Appendix (6.18).

6.5.3. Policy implications

The analysis of this section has demonstrated that Oman faces better policy choices under the WTO than the FTA in regard to investment. The collective opposition of developing countries was strong enough to freeze the efforts of developed countries to launch a comprehensive multilateral agreement on investment. Thus, investment has remained to be dealt with via the TRIMs and the GATS. Both the TRIMs and GATS provide special considerations for developing countries that may work for the benefit of the small economy of Oman. Also, multilateral negotiations on the GATS are still continuing and Oman has the opportunity to make its concerns and interests addressed in these negotiations. However, Oman under the FTA is obliged to accept the U.S.' designed rules on investment as a result of which Omani domestic investors will have to compete with U.S. investors on equal footing. The ability of the Government of Oman to restrict ownership and the operation of U.S. investors in Oman's territory is substantially eroded. The only exceptions are those listed, on the basis of the inflexible negative list approach, in Oman's schedules in Annexes I, II, and III to the FTA. Many of these exceptions are modest and not of important interests to the U.S. investors. Oman has better policy choices under the WTO/GATS, as only those specified in Oman's schedule of commitments, on the basis of positive list approach, are subject to liberalisation. Under the WTO, Oman can also apply important conditions in relation to shareholding and Omanisation, but such a choice is much limited under the FTA.

6.6. Conclusion

As in the previous chapter, the analysis of this chapter has demonstrated that WTO arrangements are more flexible, comprehensive, and comprehensible than the FTA and that the policy choices facing Oman under the multilateral approach of the WTO are better than under the FTA. The analysis of "textiles and apparel" reveals that although Oman's textile exports have been damaged as a result of the full liberalisation of this sector in international trade and the full implementation of the multilateral Agreement on Textiles and Clothing (ATC), the study, on the other hand, has found that the situation of Oman's textile industry under the FTA will not be any better. The FTA does not provide any significant opportunity for the revival of this industry.

Even the annual total quantity of 50 million square meters exempted from the ROO, on which the MOCI (2006c) seems to place its hopes for the revival of the industry, is obstructed by many conditions and limitations. The quota is temporary and only applies to cottons or man-made fibre apparel goods and can be stopped at any time by the U.S. using emergency actions or by claiming that Oman has failed to carry out the verification process to monitor the operations of its textile industry. Also, the obligations of allowing the U.S. to participate in such investigations have serious implications on Oman's sovereignty.

Even if Oman sought to exploit the exempted quota, it will have to compete against many other more competitive players in the U.S. textile market, such as China, Bangladesh, Cambodia, and Vietnam, whose exports to the U.S. market have increased for the last few years (Emerging Textiles.com, 2007). Unlike the situation before 2005, the U.S. market is now much more open and all of these textile producing countries enjoy natural endowment and cheap labour advantages and can satisfy the ROO requirements of the U.S. Hence, Oman's textile industries will have to compete against all these naturally competitive players. Therefore, because Oman lacks comparative advantages in this sector and due to the great difficulties to compete against other textile exporters in the U.S. markets, it is in the interests of Oman to adapt its trading strategy to act more as an "importing country" rather than an "exporting country". Thus, it will be of Oman's interests to support the full liberalistion of this sector under the WTO and encourage different exporters to compete in the Omani market for the benefit of consumers in Oman.

The analysis on the area of "government procurement" has also revealed that Oman has better policy choices under the WTO than the FTA. Under the WTO, Oman has been able to refrain itself from becoming an official party to the GPA. The status of "observer" enables Oman to attend the meeting of the CGP but without participating in its decision making process. Thus, Oman has been very careful not to commit itself to such an agreement where it would loose an important tool of promoting its national industries. However, under the FTA Oman is obliged to open the GP market of 38 entities to U.S. bidders. This ultimately means that Omani businesses will have to compete on equal footing against the advanced businesses of the U.S. Even the exemption of small-medium Omani businesses from the obligations of the FTA is quite questionable, as this exemption is conditioned by the definition of these businesses in "A Glance at Industry in Oman". This implies that any domestic business whose employees exceed 99 will not be classified as such and will be subject to the obligations of the FTA. However, the U.S., on the other hand, has not committed itself to any definitions for its small businesses.

Similarly, although Oman under the WTO has made many commitments to liberalise its telecom sector, the FTA applies even far greater commitments. Some of these commitments do not even exist in the WTO. As is suggested earlier, under the multilateral approach of the WTO, Oman can join other countries which acceded to the WTO recently, the so-called "recently acceded members" and collectively lobby for not making any additional commitments on telecom in the current Doha Round. However, this policy choice is not available under the bilateral approach of the FTA, where Oman is obliged to abide by many liberalisation commitments that go beyond those of the WTO. Some of these obligations have serious implications on the Government of Oman, which is prohibited from according the company in which it holds the majority of shares, Omantel, any favourable treatment different from those accorded to U.S. telecom suppliers. Also, the Government is obliged to eliminate its ownership in Omantel and inform the U.S. Government about the time of its intention to do so. Not only that but Omantel itself is obliged to provide U.S. suppliers equal and non-discriminatory treatment to what is accorded to its subsidiaries or affiliates such as Oman Mobile, Oman Fiber Optic, and Infoline Company. This implies that Omantel has to provide its competitors from the U.S. equal treatments to what it accords its own subsidiaries! Even the very few exceptions guaranteed for Oman can never be compared to those of the U.S. The latter has made far greater exceptions than those of Oman. The conditional specifications imposed on Oman for defining the meaning of "rural areas", so that local suppliers can be exempted from some of the obligations of the FTA, demonstrates how complex the situation is made for Oman. However, such specifications are not applicable to the U.S. Because of all these factors, Oman faces better policy choices under the multilateral WTO approach than the bilateral FTA approach.

Finally, developing countries collectively managed to stand against the U.S.' pressures to incorporate a separate agreement on "investment". But, under the FTA Oman could not escape such pressures as it is committed to abide by the very comprehensive chapter on "investment", on the basis of which U.S.' investors can establish 100 percent foreign owned businesses in Oman and must be treated on equal footing with national enterprises. The only exceptions are those listed in Annexes I, II, and III, most of which are small sectors and not of great importance for the economy of Oman or for U.S. investors. The dispute settlement on investment measures is made very complicated and different from the dispute settlement of chapter twenty. It implies that the Government of Oman may have to enter into direct dispute against U.S. investors. The Government of Oman must prepare itself for such a challenge. However, the robust and well-

tested dispute mechanism of the WTO with its special considerations and technical assistance for developing countries provides Oman with better policy choices than the FTA.

Having textually analysed the data collected from various official documents on textiles, government procurement, telecoms, and investment, the chapter now shifts gear to re-produce the aforementioned very detailed textual analysis through a more systematically codified analysis. As has already been explained, the objective is to help the reader obtain a much simpler picture about the main contents and findings of the textual analysis through the codifications analysis based on common categories which are further broken into other smaller categories, as is demonstrated in the tables below.

6.7. Codification analysis

Table 6.5: Codified analysis of official documents on textiles and apparel

Category		Textiles and apparel under the WTO and the FTA
Focused coding		
Multilateral WTO approach		- Oman's textile industry flourished under the restricted quota system of the Multi-Fibre Agreement (MFA). - In 2005, the MFA was fully replaced by the Agreement on Textiles and Clothing (ATC), which ended the quota system. - As a result, the performance of Oman's textile industry declined substantially.
Bilateral FTA approach		- Textiles must meet the special ROO of chapter 3 and other ROO of chapter 4. - The FTA exceptionally requires each party to permit imports from the other party of an annual total quantity of 50 million square meters of cottons or man-made fibre apparel goods even if these goods do not meet ROO. - Oman must adopt a strict programme to ensure that Oman's textile exports to the U.S. are marked with the correct country of origin. - Strong follow-up and verification programmes must be carried out by Oman to ensure that textile exports to the U.S. meet the obligations of chapters 3 and 4.
Policy implications for Oman	**Multilateral approach**	- Oman faces great difficulties to compete against exporters from countries such as China and India which enjoy natural endowments and cheap labour. - Oman must redefine its interests to act more as an "importing" rather than textile "exporting" country. - It would be in Oman's interests to support the full multilateral liberalisation of textiles and encourage imports of textiles from Asian countries which would lead to reduction of prices and benefit consumers. - Oman can utilise its strategic location to act as a hub via which textile imports can be re-exported to neighbouring countries.
	Bilateral approach	- Lacking resource endowments makes it very difficult for Oman to meet the complicated ROO of chapters 3 and 4. - Oman should not place big hopes on the exempted 50 million square meters from the ROO obligations, as this quota strictly apply to cotton and man-made fibre apparel and only for a provisional period of ten years. - The U.S. can always increase tariffs against Oman's textile exports as an "emergency action" or as a "safeguard measure" of chapter 8, if it feels that they were of increased quantities and caused serious damage or actual threat to its domestic industries. - Oman must meet complex administrative requirements to monitor the operations of its textile industry and investigate any cases of violations at the request of the U.S. - Oman must allow the U.S. authorities to directly participate in such investigations and visit its textile factories; an obligation that may have serious implications on the sovereignty of the investigatory process of Oman. - If such obligations are not met, the U.S. could deprive Oman from the benefit of the exempted quota. - No such obligations are required under the WTO.
Theme	Both the WTO and the FTA do not help Oman's textile exports to achieve any substantial revival. But, as a textile importing country, Oman faces better policy choices under the WTO than the FTA. Hopes to benefit from the exempted quota of the FTA are obstructed by so many restrictions and conditions.	

Source: Compiled by the author (2009)

Table 6.6: Codified analysis of official documents on government procurement

Category		Government procurement (GP) under the WTO and the FTA
Focused coding		
Multilateral WTO approach		- GP is regulated through the plurilateral Agreement on Government Procurement (GPA), which only applies to its 38 signatories and administered by the Committee on Government Procurement (CGP). - The exact level of market opening is specified in each party's Appendix I which consists of annexes on the covered entities, services, construction services, and threshold levels. - Parties can subject procurement of services on a "positive list" basis, i.e. only the listed services are subject to the GPA; other non-listed services are not. - Developed countries attempted to multilateralise the GPA but developing countries refused to do so due to the importance of GP for the developments of their national industries. - Negotiations on the transparency on GP were dropped completely in the July Package. - Oman is not a party to the GPA but only an "observer".
Bilateral FTA approach		- Chapter 9 applies to entities, services, construction services, and the threshold level that are listed in the annexes to Appendix I of each party. - There are 38 different entities listed in Oman's annexes 1, 2, and 3. Agencies subordinate to 33 of these entities are also subject to chapter 9. - Based on side letters, Oman must not control nor influence the procurement of Omantel, Petroleum Development Oman, and Oman Liquefied Natural Gas. - U.S. exceptions from chapter 9 far exceed those of Oman. - The U.S. made more commitments in the GPA than the FTA. - Oman had to use the "negative list" where all types of services are subject to chapter 9, except where it is specifically outlined in Section D to Annex 9. - Small businesses are exempted from the obligations of chapter 9.
Policy implications for Oman	**Multilateral approach**	- The opposition of developing countries to multilateralise the GPA helped Oman avoid being an official party to it. - Oman can continue using its GP to promote national industries. - The status of being an observer to the GPA enables Oman to attend meetings of the CGP, and thus evaluate the potential impact of the GPA on its economy before deciding to negotiate its membership. - If Oman faces pressures to start negotiating GPA membership, it is better to do so via the GCC.
	Bilateral approach	- U.S. suppliers enjoy favourable treatment to compete equally with Omani suppliers for the procurements of the covered entities, a treatment that is not extended to other GPA parties. - Omani suppliers will face difficulties in competing against U.S. suppliers due to the competitive advantage of the latter. - The Government of Oman cannot utilise the procurement of Omantel, PDO, and OLNG in which it owns important shareholdings to promote national industries; - Oman's exceptional preference to small and medium enterprises is restricted to the definition mentioned in "the Glance at Industry in Oman", which refers to small enterprises as those whose employees are less than 10, whereas the medium enterprises are those whose number of employees is from 10 to 99. - The U.S. small enterprises are not based on any definition.
Theme	Multilateral arrangements helped Oman avoid making any commitment in regards to its GP, but the FTA has obliged Oman to discriminatorily open its GP market to U.S. suppliers. Oman faces better policy choices under the WTO than the FTA.	

Source: Compiled by the author (2009)

Table 6.7: Codified analysis of official documents on telecommunications sector

Category		Telecommunications sector under the WTO and the FTA
Focused coding		
Multilateral WTO approach		- Oman is committed to open different value-added services and basic telecoms. - Oman must allow the commercial presence of 100% foreign owned telecom suppliers except in audio services (related to motion picture and videotape distribution) to 49% and cinema ownership and operation to 51%. - Oman must ensure that all services suppliers are guaranteed access to and use of public basic telecom networks and services. - Oman can apply restrictions on resale or require specific technical interfaces to ensure that the responsibilities of suppliers to provide public telecom transport networks and services are safeguarded or that their technical integrity is protected.
Bilateral FTA approach		- Chapter 13 contains similar but stricter obligations to those of the WTO. - Chapter 13 adds new other obligations that do not exist in the WTO. - Chapter 13 contains provisions that prohibit the Government of Oman to exercise influence on telecom suppliers. - Telecom suppliers in rural areas are exempted from chapter 13 obligations. - Oman and the U.S. made exemptions in case of commercial mobile services.
Policy implications for Oman	**Multilateral approach**	- Oman is committed to open its telecom sector for foreign suppliers of 152 members on non-discriminatory basis. - Oman has the chance in the ongoing negotiations on the GATS to express its concerns and interests.
	Bilateral approach	- Oman must allow 100 percent commercial presence of U.S. investors in all types of telecom services including audio services and cinema ownership and operation. - Unlike the WTO, Oman cannot apply restrictions on resale or require specific technical interfaces. - U.S. suppliers entertain favourable treatments that other foreign suppliers do not entertain in relations to: resale of public telecom services, number portability, dialing parity, co-location, access to poles, ducts, conduits, and rights-of-way. - The Government cannot accord favourable treatment to Omantel and must eliminate its 70% shareholding in this company. - Government of Oman must ensure that Omantel provides U.S. suppliers equal treatment to what is accorded to its subsidiaries, affiliates, and non-affiliates in regard to the availability, provisioning, rates, or quality of like public telecom services and the availability of technical interfaces needed for interconnection. - Omantel must provide U.S. suppliers with empty spaces where they can install, maintain, or repair their equipments and must permit them to access its submarine cable system and its owned or controlled poles, ducts, conduits, and rights-of-way. But, no similar commitments are required under the WTO. - Chapter 13 guarantees far more exceptions for the U.S.' commercial mobile services and its rural suppliers than Oman. - Oman's exceptions of telecom suppliers in "rural areas" are subject to the strict definition of these areas, which entail: a community that was not yet supplied with telecom services as of January 2005, does not have a total population of more than 1,000 inhabitants, nor does it have a fixed telephony penetration rate of more than 10% of the population. - There are no specifications required to define the U.S. rural areas.
Theme	Oman is obliged to open its telecom sector under both trading systems. But, Oman's commitments in the FTA are much greater, stricter, and less flexible than those of the WTO, while the U.S. can pursue different protective means to safeguard its domestic suppliers. Oman faces better policy choices under the WTO than the FTA.	

Source: Compiled by the author (2009)

Table 6.8: Codified analysis of official documents on investment

Category		Investment under the WTO and the FTA
Focused coding		
Multilateral WTO approach		- Due to disagreements between developed and developing countries, negotiations on investment were dropped from the July package. - The TRIMs outline the prohibited measures that can lead to discrimination against imported goods. - The GATS is linked to investment via mode three (commercial presence of foreign investors), but it is not an investment agreement by itself. - Oman is committed to open12 services for foreign investment and allows foreign equity of 70%, except where otherwise stipulated in specific sectors. - 80% of the total workforce of each foreign investor must be Omanis.
Bilateral FTA approach		- Unlike the TRIMs which only apply to imported goods, chapter 10 of the FTA applies to goods and services. - U.S. investors may own up to 100% of the equity of any enterprise established in Oman. - Omani investors will have to compete against U.S.' corporations on an equal footing in almost all sectors, except where it is otherwise stated in Oman's Schedules in Annexes I, II, and III. - Oman must provide any U.S. covered investment with fair treatment, full protection, and security. - Chapter 10 prevents parties to condition fulfilling certain performance requirements such as achieving a particular level of domestic content or transferring a particular technology or a production process. - Oman's commitments in chapter 10 interlinks with chapters 11 (cross-border trade in services), 12 (financial services), and 13 (telecommunications), which all go beyond those of Oman's Schedule under the GATS. - Based on "negative list" approach, all sectors and services are subjects to chapters 10, 11, 12 and 13 except those listed in Oman's schedules. - Disputes over investment issues under chapter 10 are subject to different mechanism from that of chapter 20 and can entail private firms form one party against the government of the other party.
Policy implications for Oman	**Multilateral approach**	- Based on the TRIMs and GATS, Oman must treat goods and services of all WTO members equally. - Oman can benefit form the special considerations provided in the TRIMs and GATS for developing countries, particularly in relation to technical assistance and financial difficulties. - Conditioning foreign equity by 70% and Omanisation by 80% help developing national businesses and employing Omanis.
	Bilateral approach	- Omani investors may not be able to establish joint ventures with U.S. investors as the latter have the right to establish 100% commercial presence in Oman; a discriminatory treatment that is not extended to other WTO members - Many of the exceptions listed in Annexes I, II, and III are not as important for the economy of Oman as other sectors such as telecom, banking, and GP that are made subject to the FTA. - Oman may not be able to impose the 80 percent Omanisation conditions on U.S. investors particularly at the managerial, professional, and specialty personnel level. - The Government of Oman can become a direct party to a dispute against U.S. corporations.
Theme	The multilateral arrangements on investment are more flexible for Oman and better help it develop national industries and employ Omanis than the FTA. Oman faces better policy choices under the WTO than the FTA.	

Source: Compiled by the author (2009)

CHAPTER SEVEN

PERCEPTIONS OF ISSUES RELATED TO OMAN'S WTO MEMBERSHIP AND ITS FREE TRADE AGREEMENT WITH THE UNITED STATES: ANALYSIS OF THE SEMI-STRUCTURED INTERVIEWS

7.1. Introduction

This chapter analyses the results of the semi-structured interviews and begins by exploring the interviewees' opinions about what they believed to be the costs and benefits and reasons for Oman's involvement in two different trading approaches; the WTO and the FTA. This is followed by disclosing the interviewees' perceptions on Oman's negotiating experience under the two trading approaches. Interviewees' expectations about the future of the WTO and the MEFTA project and their views on the involvement of Majlis Al-Shura (MAS), Majlis Al-Dawla (MAD), the academia, and business community in debating free trade agreements are subsequently revealed and analysed. This is followed by an analysis of the interviewees' opinions about the WTO plus issues which are included in the FTA such as labour, environment, government procurement but not in the WTO. Overall, the chapter supports the earlier findings that Oman faces better policy choices under the WTO than the FTA. Interviews revealed that the FTA was politically driven. Oman's lack of preparations and its urgency to conclude the FTA negotiations within shortest possible period of time were also revealed through the interviews. Important institutions of the Omani society such as the MAS, MAD, the academia, and the business community were absent from the WTO and the FTA discussions. These findings are re-produced in forms of codified categories at the end of the chapter.

7.2. Oman's membership to the WTO

7.2.1. Reasons for the delay of acceding to the WTO

The question of why Oman did not become an official member to the WTO before November 2000 was brought up during some interviews. Interviewees provided different justifications that are elaborated below.

7.2.1.1. Protectionism and monopoly were the reasons for the delay of WTO membership

Five interviewees attributed Oman's late step to join the WTO to the conservative and protective policies that prevailed in the 1980s and early 1990s. It was thought that opening the economy and liberalising trade would not help the development of national industries fearing that foreign competition would outpace and overcome these industries and drive them out of businesses. Two interviewees particularly pointed out that this protective stand was a prominent feature of the

economy, although policy makers liked to emphasise in different occasions that Oman was a liberal economy and sought to provide attractive environment for foreign investors. However, the sincere belief and adherence to the principles of economic liberalism was, according to these interviewees, difficult to realise during the 1980s and early 1990s as Oman could not lift itself out of the policies of economic protectionism. The highly complicated bureaucratic procedures that foreign investors had to undergo before securing final approvals for their investments were very apparent and played an important role in restricting the advancement of the economy, particularly in relation to the diversification policy.

The five interviewees added that the strong monopoly of certain business families in key economic sectors; such as oil-related businesses, car sales and maintenance, insurance, tourism, and banking and the influence of these groups in different governmental organisations made it difficult for foreign investors to effectively compete in the Omani market. The prohibition of the Basic Law (Article 53)[1] of members of the Council of Ministers not to combine their ministerial positions with the chairmanship or membership of the board of any joint stock company, attempted to reduce this kind of influence. The old conditions of restricting foreign ownership to 49% further consolidated this monopoly as it obliged foreign investors to form partnerships with Omani businesses so that the latter would maintain the upper hand. The interviewees believed that the Government's concern of protecting national industries was driven by these monopolistic influential business groups and was the main cause of the delay of Oman's membership to the WTO. They realised that this membership would lead to more competition and end their monopoly.

This delay, the interviewees argued, proved to be very expensive as negotiations to enter the WTO became harder and tougher. Oman had to agree to liberalise most of its services sectors such as education, transport, insurance, banking and finance, sea transport, professional services, constructions, and communications. In most of these services, Oman agreed to raise foreign equity from 49 percent to 70 percent, and even to 100 percent as is the case of telecommunications. Being a late-comer to the WTO in November 2000, Oman was given a shorter time to open up many of its services for foreign competition than other developing

[1] Article 53 of the Basic Statute states that;
Members of the Council of Ministers shall not combine their ministerial position and chairmanship of or membership to a board of directors of any public joint-stock company. The Government units which they are in charge of or supervise shall not deal with any company or establishment in which they have an interest whether direct or indirect. They shall always, by their conduct, pursue the interests of the country and work in furtherance of the public benefit. They shall not abuse their official positions in any form whether for their own benefit or the benefit of those with whom they have special relation.

countries that had entered the WTO before Oman. The interviewees believed that if Oman had joined the WTO earlier, it would have got a better deal.

7.2.1.2. Oman's membership to the WTO was a natural step

The other six interviewees provided different explanations, and commented that Oman's accession to the WTO, although it was late in comparison with other countries, was a natural outcome of various factors that took place at different levels; locally, regionally, and internationally. At the local level, Oman during the 1970s and 1980s did not experience major economic or social problems. At that stage, Oman was still in the early stages of its development and involved in infrastructure investments including constructing hospitals, schools, roads, and government ministries and institutions as part of its economic take off period. Oil prices provided adequate revenues, apart from during the oil crisis in 1985. There were no substantial difficulties in accommodating Omanis in different types of jobs in the public sector. Thus, open economy and free trade principles were not clearly accommodated in the political economic thinking of Oman at that time, even though these principles were referred to from time to time in different occasions.

However, when things started to be more problematic particularly with the increasing number of job seekers and the concerns of oil depletion within 15-25 years -- accompanied with the uncertainty of oil prices in international markets -- Omani economic policy makers sought a new strategy to lift up the economy from all these uncertainties. As a result, the Oman Vision 2020 aiming to reach a diversified economy by 2020 was launched in 1995. This Vision became the basis of the subsequent five-year economic plans since the 1990s. As part of the Vision was the clear adherence to the free trade ideology, which resulted in the application for WTO membership in April 1996; i.e. one year after the adoption of the Vision 2020 and the first year of the fifth five-year economic plan (1996-2000). Hence, for these interviewees, it was the natural economic and social development, rather than the protective or monopolistic stand, which drove Oman to apply for WTO membership. They commented that although this membership only became official in November 2000, it was the application and negotiating processes in the WTO which delayed Oman's accession to the WTO rather than Oman's policy of economic protectionism. Thus, they commented that Oman's adherence to economic liberalism that patently became to characterise Oman's political economic thinking after 1995 should not be

questioned. The incorporation of this adherence in the Basic Law[2] of the country was a solid evidence for that, they argued.

At the regional level, and a part from Kuwait which had been a member of the GATT 1947 in 1963 (WTO, GATT signatories, 1995u), all other GCC countries did not become members to the GATT 1947 before 1993. There was a consensus between them not to rush to accede to this multilateral agreement as it was believed that they should first reform their domestic laws in a way they could be integrated collectively to achieve overall GCC common interests. However, GCC countries; Bahrain, Qatar, UAE,[3] and Saudi Arabia,[4] started seeking GATT/WTO membership one after another without any prior consultation with each other. Thus, it was natural for Oman to also seek WTO membership so that it would not be left out of the club of the MTS.

Internationally, the competition between economic liberalism and communism during the 1970s and 1980s and the subsequent non-aligned stand undertaken by Oman and many other developing countries was also an important factor for Oman not to announce itself as an economic liberalist adherent. This was because Oman would appear to be contradicting its non-aligned policy during that time under the umbrella of the Non-Aligned Movement. However, with the end of the Cold War, the collapse of the Soviet Union, and the prevalence of economic liberalism, Oman became more able to firmly commit itself to the principles of open economy and free trade and incorporate them in its domestic laws. Also, the MTS negotiations under the Uruguay Round in the period 1986-1994 did not encourage Oman to be an official member to those long-lasting negotiations. Oman preferred to follow the development of these negotiations. But, when negotiations were over and the WTO was established in 1995 as a solid and robust institution governing the world trade, Oman became an "observer" to this institution in the same year and applied to be an official member in the following year (1996). In concluding, this strand of thinking states that Oman's membership to the WTO was a natural outcome of all the above-mentioned factors.

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[2] Article (11) of the Basic Law states that; *[t]he basis of the national economy is justice and the principles of a free economy.*

[3] Before 1995, three GCC countries were already parties to the GATT; namely Bahrain on 13 December 1993, Qatar on 7 April 1994, and UAE. on 8 March 1994 (WTO, 1995u).

[4] Saudi Arabia applied to join the GATT1947 on 13 June 1993, but due to the very long and complicated negotiations, it only became an official member to the WTO on 11 December 2005 (WTO, Saudi Arabia and the WTO, 2005c).

7.2.2. Costs and benefits of the WTO membership

When asked about the potential impact of Oman's WTO membership, many interviewees commented that it was difficult to assess the impact of the WTO on Oman's trade as this would require an in-depth analytical study. Unfortunately, although Oman had been a member to the WTO for around seven years, there was hardly any study undertaken. Nevertheless, the interviewees went on to explain what they believed to be the benefits and costs of the WTO membership on Oman's trade. These interviewees can be classified into three main categories; 1) those who held positive views about the WTO; the optimists, 2) those who held negative views; the pessimists and 3) those who held both opinions and argued to balance between the other two views; the risk adverse.

7.2.2.1. Positive views: the optimists

Seven interviewees believed that being a member of the multilateral trading system provided an assurance for Oman that its trade was tied up to and made part of a ruled-based and well-structured system where its rights were protected and its obligations were ensured to be put in practice. The WTO was the most efficient institution that sought to address and reconcile the diverse interests of different 150 countries[5], and govern trade between them. Thus, being a member of this organisation became a necessity for any country. As Oman opted to integrate itself in the global trading system, the WTO was undoubtedly the best mean to achieve this objective. Without WTO membership, such integration would be very difficult to achieve. The robust dispute settlement mechanism of the WTO provided further assurance for any member that its rights were protected and its obligations would have to be carried out. However, the impact of the MTS depended much on how Oman could define its own interests and allocate the best means to achieve them. One of those means was uniting with other countries of similar interests such as the GCC and other Arab countries. One interviewee, a Government official, particularly commented that although the GCC countries were regionally united by the Economic Agreement and the Customs Union, the level of their coordination at the WTO level was not satisfactory. More efforts were needed by Oman and its GCC neighbours to consolidate their collective negotiating stand in the WTO in a way that would serve their common interests.

In addition, four interviewees emphasised how important the WTO was for Oman to achieve its economic strategy. For them, WTO membership provided Oman with the opportunity to export its products to the markets of 150 countries and establish businesses in them and benefit from the

[5] According to the very latest figure from the WTO website, the total number of WTO members is 153 (WTO, 2009c).

low tariffs applied by these countries as a result of their membership to the WTO. Oman could select the most suitable markets to export its products to in which Omani products could effectively compete against other products. Oman's exports would also benefit from the non-discriminatory treatment in external markets. They should have the right to be treated equally with other exports (most-favoured nation), and with local products of the importing country (national treatment). In cases of disputes, Oman would have the right, as any one else in the WTO, to resort to the dispute settlement process and make its case heard and resolved. All these principles and opportunities should give Oman the confidence to establish a clear exporting strategy based on "distinguished branding" and focus on markets where Omani exports could compete effectively. Thus, the WTO provided Oman with the opportunity to be transformed into a more real exporting economy, which fell under its overall diversification strategy.[6]

Three interviewees also pointed out to the special treatment provided by the WTO to developing countries in different fields; higher tariffs in goods, better and more flexible conditions to implement the GATS, special considerations in cases of disputes settlement, and special training and technical assistance provided by the WTO Secretariat. Oman, like any other developing country, should have the right to benefit from these special considerations. One interviewee commented that the WTO furnished Oman with the legal environment to carry out its trading activities confidently and it would be up to Oman to utilise this environment in a way that could best suit its interests.

Moreover, two other interviewees, government officials, pointed out that since Oman joined the WTO in November 2000, its overall economic performance had been very good. Foreign investment in different sectors particularly tourism increased substantially. Also, Oman's non-oil and gas exports and re-exports improved noticeably. The interviewees commented that although it was difficult to directly attribute this performance to the WTO membership, it could surely still be determined that this performance was the outcome of the open economy and free trade strategy that had been adopted by Oman since 1995 and which was further consolidated by Oman's membership to the WTO. This was clear when Oman committed itself under the WTO to liberalise many services sectors such as; telecommunications, banking, insurance, eduction, sea transport, construction. Oman agreed to increase foreign ownership in most of these services from 49 to 70 percent, with even 100 percent foreign ownership in cases of telecommunications. Oman also cancelled the requirement of the minimum capital of OR.150,000 for foreign services

[6] However, this benefit will be determined with the amount and nature of the Omani export, which is important to take into account in any exporting strategy.

companies as a pre-condition to be established in Oman. All these WTO commitments would make Oman an attractive market for foreign investors in different types of services. Thus, the WTO locked in Oman's strategy of economic reform. If Oman had not joined the WTO, perhaps its commitments towards economic reforms might have not been carried out as solidly as it had been witnessed for the last few years. Knowing that Oman was a member to the WTO and that it was subject to its rules and dispute settlement, foreign investors had been assured that their investments in Oman were safeguarded from any discriminatory and unfair practices.

Five interviewees further commented that as a result of its liberalisation commitments in the WTO, Oman's market in different services sectors witnessed increasing competition, which resulted in providing more different choices for customers and led to reduced prices. For instance, the monopoly of Omantel on the telecom sector had been eased by the new competitor NAWRAS, which managed to establish itself quite quickly as a second mobile service provider. Also, in the field of education, the number of private colleges and universities had been increasing. Instead of one university in the country; the Sultan Qaboos University, there were different private universities such as the University of Nizwa, University of Dhofar, and University of Sohar. In the health sector, new private hospitals, with foreign investment, such as Muscat Private Hospital, Al-Magrabi Hospital, and Al-Shatti Hospital had been established for the last ten years; thus providing additional health services in the country besides government hospitals. Hence, not only did these kinds of investments increase healthy competition in the Omani market and provided more choices for customers, they participated in the diversification objective of the Government as they reduced some of the burdens from the Government shoulder to provide these services.

7.2.2.2. Negative views: the pessimists

On the other hand, there were other four interviewees who clearly held a negative opinion about the WTO. One of them went as far as describing the WTO as "a sophisticated way of Western imperialism". They believed that the WTO was the design of the West, particularly the U.S. and the EU, who sought to open and control the economies of other nations by different trade agreements of their own interests such as the GATS and the highly strict measures of intellectual property rights. Other areas such as agriculture and textiles where the practice of free trade harmed their products and farmers, they applied all means to protect them. Whereas developed countries pursued all possible means to open different markets and create opportunities for their businesses and products in areas such as services and technology, they sought to protect their local agricultural products and farmers and provide them with different types of supports to stay

competitive not only in their local markets but also in international markets. The interviewees argued that Oman's commitments to open twelve services sectors under the GATS should not be looked at as part of the overall economic strategy, as is mentioned by the optimists, but as the result of the pressures exercised by the U.S., the EU., and Japan who negotiated Oman's accession to the WTO. These countries forced Oman to commit itself to open all these sectors, irrespective of whether that fit into its overall economic strategy or not.

Therefore, by being tied up with what the interviewees described as very complicated rules and obligations of the WTO, Oman's sovereignty to determine its own economic and trading activities had been eroded. Oman was no longer able to protect its infant national industries and strengthen them in a way it used to do before joining the WTO. To support this, they gave telecommunication industry as an example: Omantel, for instance, had been established, supported, and developed by the Government, but this support could no longer be practised in the same level and adherence. Omantel should prepare itself to survive in the future when new telecom foreign investors would be inevitably established in the country. The Government should also adapt itself to this reality, and the secured revenue from Omantel might not be ensured in the future.

This group of interviewees argued that Oman's overall strategy to open its economy was based on its own choice and it could implement this strategy according to its own domestic rules that better served its interests. Although WTO membership was seen as part of this overall economic strategy, the WTO imposed different rules and obligations that were made somewhere else and designed to serve the interests of other nations; mainly developed countries. Oman had only to accept them. The interviewees argued that the question which should be asked was not about whether WTO membership posed challenges on Oman's economy because these challenges were inevitable but how Oman could minimise these challenges so that less damage could be caused. Two interviewees quoted the words of the Minister of MOCI to demonstrate what they described as the imperialistic nature of the WTO when he commented during Oman's membership negotiations that; to be a member of the WTO was a problem but also to stay out of it was more problematic. Hence, Oman's membership to the WTO should not be seen as part of Oman's overall economic strategy but as an imperative step that Oman had to take to survive in the globalisation order of the WTO.

Two interviewees used the textiles and clothing sector as an example of the costs of the WTO membership. This sector was one of the most productive sectors in the Omani economy and

many hopes were placed on it to help the diversification and Omanisation processes. The sector employed many Omanis most of whom were housewives from poor background. However, as a result of the WTO membership and the subsequent end of the quota systems, most textile factories in Oman had to close down. They could not compete with the fierce competition in the global markets. Many poor Omanis became redundant as a result. Thus, losses in the social welfare of the society did not take place because of Oman's Vision 2020 but because of the full liberalisation of textiles and clothing under the WTO.

This group of the interviewees did not share the optimists' argument that the WTO protected Oman's exports in external markets and provided perfect legal environment for Oman to establish an efficient 'exports strategy'. For them, although this could be true in theory, it was no more than unrealistic rosy ambition painted mostly by the Government to highlight the best face of the WTO. For them, Oman's exporting activities were still very modest and lacked competitive stands in external markets. They had to be of high quality, acquired tastes, and at affordable prices if they were wanted to be competitive. Given the fact that Oman's industrial capacity was still very small, the low tariffs provided in external markets of other WTO members would not be of substantial importance for Oman. Rather, the WTO had already made Oman an importing country relaying heavily on imports. Imports of different types; agricultural, industrial, and technological dominated the Omani market, while Omani products were striving to stay competitive in the local market. Instead of motivating exporting activities, the WTO membership seemed to have turned Oman more into "a relaxing importing economy". Hence, the pessimists argued that rather than focusing on how to be competitive in external markets, Oman's economic strategy should focus more on how Omani products could stay competitive in the local market and not to lose more market shares.

7.2.2.3. Balanced views: the risk adverse

There was another group of six interviewees, who although did not necessarily hold an optimistic view about the WTO, still argued that the WTO provided Oman with both opportunities and challenges. Hence, it is Oman's task to exploit these opportunities and overcome the challenges. Interestingly, one of these interviewees described the WTO as a "big sea", and member countries as "fishermen". The WTO was "a big sea" because it firstly entailed so many rules, principles, agreements, and obligations on different sectors and issues and, secondly, because it governed the trade of the whole globe as reflected in its 153 country-membership. There was always a potential in the sea of the WTO to harvest something but there was also a danger of getting nothing or being lost or drowned in that sea particularly if members were not well-equipped.

Skilful fishermen were those countries such as the U.S., the EU, and Japan who knew how to sail through the game of the WTO and maximise the best of it. Some new fishermen managed to learn from past experiences and gained the skills necessary to survive and compete in the sea of the WTO. Examples of these fishermen were Brazil, India, and China. However, unskilful fishermen were those members who still had to learn about how to survive in the sea of the WTO. Oman was one of these unskilful fishermen who sill had to learn how to minimise the costs of the WTO membership and maximise its benefits. Once the skills were gained, Oman could benefit from its membership to the WTO.

Three interviewees proposed that Oman should adopt a clear strategy about how to maximise the benefit of the WTO and minimise its costs. Although Oman was committed to open up twelve services, Oman could adopt a strategy where it could put more emphasis on some of these services than the others, according to its own interests and economic vision. For instance, Oman could adopt a strong promoting programme to attract foreign investment in the tourism sector as it was regarded as one of the key sectors for Oman's diversification programme. Similar strategies could also be pursued for electricity and water supply, education, and health services where foreign investments were welcome and where the financial burden would be reduced from the Government shoulders. Focusing on attracting foreign investment on these sectors would be in line with Oman's obligations in the WTO and its privatisation programme and would have minimum damage on the existing local businesses. Secondly, however, in services such as telecom or postal services where Government's revenue was high, Oman should follow a careful strategy that would seek to open these services gradually and cautiously. Although this tactic might seem not to be in line with Oman's obligations under the WTO to fully liberalise these sectors, Oman could still buy some times by assuring foreign investors from time to time about its adherence to liberalise these sectors. At the same time Oman should prepare itself to strengthen the stand of its national companies and equip them in a way that they could survive in the market and effectively meet consumers' demands when big influential telecom and postal providers entered the market.[7] One interviewee suggested that due to the WTO wide membership, the focus on Oman to fully implement its commitments would be much less than in any other free trade agreement such as the one with the U.S.

Interestingly, the researcher observes that the above-mentioned cautious strategy seems to have been followed by the Government since 1999, when the Government transformed the General

[7]In adopting this cautious tactic of gradual liberalisation, it is important for the Government of Oman to balance between its interests of securing revenues and the interests of consumers who would like to have better services with low prices.

Telecommunications Organization (GTO) into a closed joint stock company named as "Oman Telecommunications Company" (Omantel). But Omantel remained fully owned by the Government; a position that was only to change in 2005. Due to the increasing outside pressures, the Government sold 30 percent of its shareholding in Omantel through the Muscat Securities Market and the priority was given firstly to Omani nationals and pension funds of different government institutions. Until the current time, the Government still maintains 70 percent shareholding of Omantel. Also, in 2005, the Government issued a new mobile license for a second operator; NAWRAS. However, this license was only given for mobile services and Omantel continued to maintain its sole monopoly on all other types of telecom services.[8] But, the researcher expects that the pressure on the Government to further open up its telecom market would intensively increase in the near future as its FTA with the U.S. is put into practice.

7.3. Reasons for Oman's enthusiasm to negotiate and sign the U.S. FTA

In order to compare the above perceptions about Oman's WTO membership to the FTA, interviewees were asked about their opinions on the reasons for Oman's enthusiasm to negotiate and sign an FTA with the U.S., despite being already committed to trade liberalisation under the WTO. The following paragraphs shed light on the interviewees' responses to this question.

7.3.1. Political incentives

7.3.1.1. Continuation of distinguished political support

Most interviewees believed that the driving force behind Oman's endeavour to sign the U.S. FTA was more political than economic. Some interviewees took a conservative approach and did not go into detail about exploring what they believed to be the political interests of Oman behind signing the FTA. They felt that they were not in a position to discuss the politics of the country. Only four interviewees commented that Oman had been a loyal supporter for the U.S. foreign policy in the Gulf and the Middle East. Oman understood that the FTA was part of the overall U.S. foreign policy that aimed to achieve two main objectives: integrate Israel with Arab countries and consolidate the U.S. presence in the region to further safeguard its interests of ensuring oil supply from the region. Thus, Oman's approval to sign the FTA was no more than a continuation of its support for the U.S. foreign policy and it further consolidated the political ties between the two countries.

[8] In November 2008, NAWRAS won a new license to set a second fixed line network in Oman (Zawya, 2008b).

However, one interviewee interestingly commented that Oman should be quite cautious about its pro-U.S. policy in light of the increasing hatred against the U.S. in the region. The U.S. contradictory foreign policy in the region characterised by the unlimited favouritism of Israel on one hand, and its aggressive attitudes towards Muslim nations; Iraq, Afghanistan, Iran, and Lebanon on the other hand, might not make Oman's policy towards the U.S. a very popular one. Such a policy could always, in the interviewee's opinion, remain as a cause of potential disturbance to Oman's security. Given the tensions between the U.S. and Iran, Oman should follow a very carefully balanced policy towards both countries. At least under the Bush Administration, there was always a possibility of a U.S., or Israeli, attack on Iran, which could drag the whole region into war that would likely entail Iran's neighbours. Oman should carefully consider this possibility in its relations with both the U.S. and Iran.

7.3.1.2. Retrieval of the old historical ties

Four interviewees emphasised the long historical ties between Oman and the U.S. as another important factor for Oman to sign the FTA. They referred to the old treaty of friendship and navigation treaty signed between both countries in 1833, which was one of the first agreements of its kind with an Arab country. This treaty was then replaced by the Treaty of Amity, Economic Relations, and Consular Rights in 1958.[9] The interviewees commented that when George Bush announced its MEFTA project in 2003, which included Oman, the Government of Oman saw a good chance through this FTA to remind the U.S. about how deep their historical and trade relations were. This, in the views of the interviewees, was an important political factor for Oman's enthusiasm to sign an FTA with the U.S.

7.3.1.3. Hidden competitiveness amongst GCC countries to gain U.S. support

Two interviewees commented that Oman's rush to negotiate and sign the U.S. FTA could be interpreted as a reflection of what they described as the hidden competitiveness amongst the GCC countries themselves to win U.S. satisfaction. The U.S. craftily linked the FTAs to the war against terrorism. This gave the GCC countries the impression that the FTAs were part of the U.S. foreign policy in the region. Thus, they sought to win the U.S. support by signing the FTAs, even if such a move lead to a clear breach of their Economic Agreement which required all GCC members to negotiate and sign FTAs collectively.

One interviewee commented that he heard that Saudi Arabia was also in the process of negotiating similar FTAs with the U.S. but such negotiations were conducted secretly. This was

[9] These views go in line with the researcher's analysis in chapter three.

because, in his justification, Saudi Arabia strongly opposed Bahrain's move to sign the U.S. FTA away from the GCC. Thus, the Saudis' negotiations of the U.S. FTA would be seen as a contradiction with its previous attitude towards Bahrain's individual negotiations of the FTA. Thus, the interviewee commented that it would be better and more face-saving for the Saudis to negotiate the U.S. FTA secretly. However, the researcher is very doubtful that the Saudis would secretly negotiate an FTA with the U.S. This is firstly because they do not have to do that furtively. There are already two countries in the region that publicly negotiated and signed the FTA with the U.S.; Oman and Bahrain, and, a third one is the UAE which is still in the process of negotiations. Thus, there is no reason for the Saudis to conduct secret negotiations. Secondly, the U.S. Administration must, by law, inform the Congress about its intent to negotiate any FTA. The intended letters to the Congress must be made available to the public. No such documentations were released in regard with the Saudis. Thirdly, the researcher came to know, via another interviewee, that in one of the General Secretariat meetings in May 2005, GCC members agreed not to subject the requirements of Articles (2)[10] and (31)[11] of the Economic Agreement (2001) to the U.S. FTAs. In other words, the collective negotiations requirements of the Economic Agreement will be applied to all types of preferential trade agreements with all countries except the U.S. FTAs[12]. The interviewee added that this exception was reached to mend the cleavages created by the U.S. FTAs with Bahrain and Oman and to legitimise any future individual U.S. FTAs with other GCC countries. Therefore, because of this understanding, Saudi Arabia does not need to go behind the scenes to negotiate an FTA with the U.S. However, it is important to note that the actual wordings of Articles (2) and (31) has not changed, as the

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[10] Article 2 of the Economic Agreement of the GCC states that:

> To secure better terms and more favorable conditions in their international economic relationships, Member States shall draw their policies and conduct economic relations in a collective fashion in dealing with other countries, blocs and regional groupings, as well as other regional and international organizations. Member States shall take the necessary measures to achieve this objective, including the following:
>
> i. Negotiate collectively in a manner that serves the negotiating positions of the Member States.
> ii. Collectively conclude economic agreements with trading partners.
> iii. Unify import and export rules and procedures.
> Iv Unify commercial exchange policies with the outside world.

[11] Article 31 of the Economic Agreement of the GCC states that:

> No Member State may grant to a non-Member State any preferential treatment exceeding that granted herein to Member States, nor conclude any agreement that violates provisions of this agreement.

[12] This understanding was reached in the meeting number (68) of the Financial and Economic Cooperation Committee of the GCC held in Bahrain on 7 May 2005, whose minute states in paragraph (1, p.2) that the Committee;

> 1) re-emphasises the importance of collective negotiations with other countries and economic blocs, 2) regards the bilateral free trade agreements that were signed, or will be signed, by GCC members individually with the United States of America as an exception to this principle and the obligations of the Customs Unions, and no exception must be allowed with any other country.

U.S. exception will only remain as an understanding between the GGC countries minuted in the GCC General Secretarial meeting in May 2005. The interviewee added that the EU criticised the GCC for this special exception provided to the U.S., as it entailed a direct breach of the Economic Agreement of the GCC, and led to unjustifiable discrimination for the favour of the U.S.

Interestingly, another interviewee perceived the U.S. endavour to negotiate FTAs with the GCC countries individually as a tactical political way aimed to weaken and disintegrate the GCC strength. The U.S. knew that the GCC countries were very strong when they pursued collective political and economic stands. But, this collective policy did not always serve U.S. interests. For example, although the GCC countries supported the U.S. invasion of Iraq, they collectively rejected the U.S. endavour to launch a war against Iran. Also, the GCC- EU FTA negotiations had demonstrated that the GCC members were in a much stronger position when they negotiated collectively. This collectiveness appeared not to serve the U.S. which sought to get its FTA model signed by GCC countries as easily and quickly as possible. Thus, the best mean to get around this dilemma of GCC collectivities was to approach each country individually. This tactic, as the interviewee commented, proved to be very successful to weaken GCC countries and to create enough distrust amongst them. Within very short period of time, the U.S. managed to conclude negotiations on two FTAs; with Bahrain and Oman.

7.3.1.4. Confusion about assigning the FTA negotiations to the MOCI

Three interviewees appeared to be surprised about the reasons behind the Council of Minister's decision to assign the task of the U.S. FTA negotiations to the Ministry of Commerce and Industry (MOCI), although it was known that all trade and investment agreements between Oman and other countries were supervised by the Ministry of National Economy (MNE). One interviewee commented that this was perhaps because the MOCI showed more enthusiasm to negotiate the FTA than the MNE. The other two interviewees thought that there could be a hidden agenda behind such a shift but were unable to clarify what this agenda was. One of them assumed that the MOCI had supervised Oman's negotiations under the WTO, and, thus, it was the best institution to negotiate the U.S.FTA due to the resemblance of the issues of the two trading approaches. Although this justification sounded quite logical, the interviewee could not justify why the MNE, not the MOCI, had been representing Oman in the on-going GCC FTAs negotiations with the EU, Australia, Singapore, China, and India.

7.3.2. Economic incentives

Four interviewees considered that the obvious political endavours of Oman to negotiate and sign the FTA with the U.S. left no scope for economics to justify such endavours. Although the FTA, as a document, was purely about trade and economic issues, these issues were not the reasons behind Oman's enthusiasm to sign it and thus it would be difficult to talk about economic incentives. However, other six interviewees felt that although politics was the main driving force behind Oman-U.S. FTA, it still fits into the overall strategic theme of Oman's economic liberalisation that started in the 1990s. They argued that the Government hoped that the FTA would strengthen and complement Oman's liberalisation commitments that had already been made under the WTO. Hence, economic incentives would complement political ones. Two interviewees particularly contended that while the Government comprehended that the FTA would serve certain political interests, it also recognised that the FTA would help its endeavours to attract foreign investments and overcome the challenge of unemployment. Another interviewee added that the Omani policy makers were very attracted to the FTA because the U.S. presented it as part and parcel of the MEFTA project. Oman thought that if it had signed the FTA with the U.S., it would preferentially benefit from the markets of other countries by 2013 when the MEFTA project was completed. However, the interviewee recognised that this ambition had now become very difficult to achieve because of the slow process of the FTAs' negotiations with other countries and also because other countries such as Qatar and Kuwait did not show enough interests to negotiate FTAs with the U.S. The interviewee added that it was also not clear whether the MEFTA project would entertain the support of the new U.S. President.

Three interviewees interestingly pointed out that given the continuous challenges facing the WTO negotiations, the phenomenon of the FTAs had been taking place around the globe. The EU and the U.S. were fiercely competing against each other to sign as many FTAs as possible. Sooner or later, the FTAs would replace the WTO in governing the world trade. Oman was very slow in catching up with the MTS and that proved to be quite costly as Oman was obliged to give up far more commitments than others. Oman did not want to repeat the same mistake. Realising that the FTAs would inevitably govern the world trade in the future, particularly in light of the increasing difficulties facing the WTO negotiations, Oman thought that it would rather accommodate itself with such phenomenon as early as possible. The later Oman signed these FTAs, the more liberalisation commitments Oman would have to make. Oman had learnt its lessons from being a late-comer to the WTO and this justified why it had to rush itself into the realm of the FTAs.

7.4. Oman's negotiating experience

Having provided their opinions about Oman's WTO membership and reasons for signing the FTA with the U.S., many interviewees, who participated in the negotiations under the two trading approaches, were asked about their negotiating experiences. Their responses are analysed below.

7.4.1. Oman's negotiating experience under the WTO

Many interviewees believed that negotiations under the WTO were extremely difficult and complicated. They referred to the huge amount of pressures exercised on Oman by the Working Party that negotiated Oman's accession to the WTO, particularly pressures from the U.S. and EU. As a result of these pressures, Oman had to make a wide range of liberalisation commitments on different issues and sectors. The interviewees pointed out to different factors that made the situation very difficult for Oman's negotiating team. Firstly, many interviewees thought that Oman started its negotiations quite late, April 1997, as a result of which it had to make more liberalisation commitments particularly in services than other members which had joined the GATT/WTO earlier. Secondly, the Working Party[13] consisted of the most powerful economies in the world particularly the U.S., the EU, Canada, and Australia, which all had far greater experiences and skills in trade negotiations than Oman. Thus, Oman's negotiating team faced great difficulties to go along with the demands of each of these members.

7.4.1.1. Multilateral negotiations with the U.S. were the most difficult

According to four interviewees, most members of the Working Party that negotiated Oman's accession to the WTO coordinated tasks with each other, although each of them negotiated individually with Oman. Every member sought to make Oman agree to certain issues. Oman had to satisfy the demands of each negotiator individually. Any commitment made by Oman to each of them would automatically apply to all WTO members. Interestingly, all interviewees emphasised how difficult the negotiations with the U.S. in particular were. The U.S. was the last and the toughest negotiator. Although Oman had given so many commitments throughout the process of negotiations and managed to finally conclude negotiations with the EU, Canada, Australia, and Mexico, the U.S. still claimed to be unsatisfied with these commitments and asked Oman to offer even more commitments. This was the case in telecom where the U.S. insisted on allowing 100 percent foreign ownership. Oman did not resist the pressures of the U.S. and had to agree to this.

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[13] The Working Party that negotiated Oman's accession to the WTO consisted of the U.S., EU, Japan, Canada, Australia, New Zealand, Switzerland, Mexico, India, and Kyrgyz Republic (Fulaifil, 2000, p.42).

The U.S. used all possible means to create additional pressures on Oman. One of these means was the threat of bringing new members into the negotiations. This was the case of Kyrgyz Republic, which joined the negotiations at a very late stage. According to two interviewees, the Omani team was very surprised with the Kyrgyz Republic's late interests in joining Oman's negotiations, as there were no trading activities whatsoever between the two countries. However, it appeared that Kyrgyz Republic was only brought and used by the U.S. to create additional pressures on Oman. Kyrgyz Republic was receiving instructions from the U.S. to forward specific questions written by the U.S. and make particular demands, so that the Omani team would be pressurised from different angles. To further increase its pressures on Oman, the U.S. threatened to bring even more new other members besides Kyrgyz Republic to the negotiations which would further add more demands and would delay Oman's accession to the WTO. Similarly, another interviewee pointed out that Mexico and Canada were deliberately brought to the negotiations by the U.S., so that each NAFTA member would act as a source of negotiating pressure on Oman, to ensure achieving the maximum level of liberalisation commitments from Oman. Two interviewees added that negotiations with the U.S. was the most difficult because even when agreements were thought to have been reached, the U.S. team used to come back in the following meetings asking for even more new other commitments. The U.S. team kept claiming that in order to finalise negotiations with Oman, they had to satisfy different pressure groups, businesses, and the Congress in the U.S. and convince them that their negotiations with Oman served their interests, or otherwise the U.S. team would be blamed heavily. Inevitably, Oman had to undergo through this complicated dilemma with the U.S. until the end of the negotiations.

7.4.1.2. Lacking skills, experiences, and techniques

Four interviewees pointed out that Oman's negotiating team lacked the skills, experience, and the strategy that were necessary in any trade negotiations. Also, it was not fully clear for the team to what extent they should commit the country to liberalise different services. One interviewee particularly pointed out that the Omani team also lacked control of its internal information as much of the inside discussions amongst the team members were leaked out, either intentionally or unintentionally to different members of the Working Party. This made the Omani team quite vulnerable during the negotiations as most of its points and techniques were exposed to the other side. Also, most members of the Omani team lacked the knowledge about the WTO agreements and their technical details, which gave the Working Party the upper hand in the negotiations.

7.4.2. Oman's negotiating experience under the U.S. FTA in comparison with the WTO

Seven interviewees described Oman's negotiating position under the U.S. FTA to be shorter and softer, but much less fruitful and more pressurised, than was the case under the WTO due to different factors that are outlined below.

7.4.2.1. Stronger convictions for WTO membership

Interviews revealed that Oman's conviction to be a member to the WTO was very strong. In mid 1990s Oman became fully convinced that its membership to the WTO was inevitable. Oman realised that the WTO was the ultimate legal order governing the global trade between countries. Thus, the WTO membership was the best means for Oman to integrate in the global economy as part of its overall strategic vision.[14] But, the U.S. FTA was imposed on Oman as part of the U.S. political-economic strategy in the region. Oman accepted to be part of this new strategy more due to political reasons rather than economic ones, as some interviewees commented.

Nevertheless, there were other two interviewees, whose views seemed to be quite different and worth elaborating. For them, both Oman's membership to the WTO and its FTA with the U.S. did not reflect any clear economic strategy about the benefits of the two trading approaches on Oman's trade. But rather, Oman had only reacted to the dictation of the global orders driven by super powers. When Oman applied for WTO membership, the fear of being left out of the club of the WTO was the main driving force behind Oman's endavour to be a member of that club as any one else. When this objective of joining the WTO was achieved in 2000, Oman's ambitions stopped there. Nothing much had changed since then. Apart from appointing one employee in Geneva to represent Oman in the WTO meetings, Oman did not do any thing substantial to assess the impact of the WTO membership on its trade. This confirmed, as these interviewees argued, that Oman's main objective was only to be a member to the WTO rather than seriously benefiting from its opportunities. The interviewees added that the same argument applied to the U.S. FTA. Omani policy makers perceived these FTAs as the new global order to govern trade between nations. The U.S. knocked the doors of different countries in the Gulf and the Arab

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[14] The comments of the Minister of Commerce and Industry (cited in WTO, 2000c) during the time of signing the Protocol of Oman's Accession to the WTO support this view. The Minister clearly emphasised that *Oman sincerely believes in the principles of the multilateral trading system embodied in the WTO*. Similarly, Mike Moore (WTO, 2000c), the then WTO Director-General, commented that;

> Oman's forthcoming accession is a new vote of confidence in the WTO.... No nation, large or small, can ensure its future alone, and the Multilateral Trading System provides a stable and predictable framework for economic engagements between nations and for the business community. That in turn promotes growth, employment and prosperity.

World to sign FTAs with. Oman did not want to be left out of this new order, although it had joined the WTO few years before. The objective was to be part of the U.S. FTAs as early as possible irrespective of the consequences. This was demonstrated by the rush into the FTA negotiations with the U.S. without enough preparations. The issue of how Oman prepared itself for the negotiations under the two trading approaches was covered in many interviews, as is explored in the following paragraphs.

7.4.2.2. Better preparations for WTO negotiations than the FTA negotiations

According to four interviewees, Oman's strong conviction to pursue WTO membership was reflected in the way Oman prepared itself for the negotiations. Before the start of its accession negotiations, Oman closely followed the GATT negotiations during the Uruguay Round and in April 1995 became an "observer" to the WTO. Thus, Oman had good opportunity to follow and experience the multinational negotiations even before officially applying for WTO membership in April 1996. Oman also resorted to expatriate experts to conduct feasibility studies on the likely implications of the WTO arrangements on its trade and the kind of liberalisation commitments it should, or should not, make during the negotiations. The issue of applying for the WTO membership was thoroughly discussed in various ministerial gatherings, correspondences, and presentations. As a result, Oman's negotiating team knew even before the start of the negotiations that there were certain issues on which they should endavour to secure the best commitments possible. Examples of these issues were; 1) high level of employing Omanis in private sector entities, 2) securing good minimum percentage of shareholdings for Omani national businesses in their partnerships with foreign investors, 3) imposing extremely high level of tariffs on socially, religiously, and healthily unfavourable imports such as alcohol, tobacco, and pork meats, 4) applying the highest level possible of tariffs on imports that could be locally produced such as banana, lemon, eggs, and dates, and 5) not subjecting Oman's government procurement to trade liberalisation due to its importance for the development of national industries. Although Oman's negotiating team faced great difficulties under the WTO, particularly from the U.S. and the EU and lacked the negotiating experiences and skills, it managed to stand solid to achieve much of the above-mentioned objectives. One interviewee commented that the Omani team struggled a lot for three and a half years of negotiations to achieve those objectives and it seemed to have managed to do so.

However, Oman's preparations for the negotiations of the U.S. FTA, on the other hand, were much more modest and were conducted within a very short period of time than under the WTO. Three interviewees who experienced the FTA negotiations commented that there was no clear

vision about what Oman's position in the negotiations should look like. Everything was taken up very fast. Two interviewees exposed that they had the impression that the Government had already decided to sign the FTA even before the start of the negotiations. This affected their enthusiasm. One interviewee mentioned that some negotiators expressed their concerns to the MOCI about the unjustifiable speed of the negotiations and the lack of preparations from the part of Oman, but the impression they always got was that the Government was determined to sign the FTA, and that the outcome of the negotiations would not make much differences. Hence, the FTA negotiations were no more than an administrative task they had to carry out.

Interestingly, however, five other interviewees in the form of negotiators and some government officials did not fully share the above-mentioned view. Although they agreed that things in regard to the FTA negotiations were going quite fast and they had the impression that politics was the driving force behind the FTA, they did not like to be described as weak negotiators. But, they were stubborn and tough with the U.S. negotiators. Although in the end they agreed to most of the U.S. demands, this was not because they gave up easily or negotiated badly, but due to the very disadvantageous negotiating environment they were placed at, which did not help their negotiating position. Some of them referred to the continuous pressures created by the MOCI urging them to let things go smoothly and not to complicate the negotiations. Three interviewees referred to the lack of preparations and the very short time they had been given to read and analyse the relevant chapters of the FTA. These interviewees felt that the U.S. teams were thoroughly informed about Oman's trade, economy, and regulations in different sectors and issues. But, in turn, the Omani teams knew very little about the U.S. trading system. This lack of knowledge played an important role in placing the Omani teams at a very disadvantageous negotiating position and gave the U.S. the full control of the negotiations.

7.5. Important events surrounding the FTA negotiations

The interviews disclosed many events that took place before, during, and after the FTA negotiations, which further demonstrates Oman's lack of preparations for the negotiations and the rush to conclude them. These events also display how politics, rather than economics, was the driving force behind the FTA.

7.5.1. Events that took place before the start of the FTA negotiations

7.5.1.1. Trade and Investment Framework Agreement (TIFA) background

According to three interviewees, when Oman and the U.S. negotiated and signed the TIFA on July 7, 2004, the impression held by many government officials that this agreement was no more

than a non-abiding framework to enable both parties to further develop their trade relations. This was the case of TIFAs that were signed by the U.S. with other countries such as Kuwait, Qatar, and Saudi Arabia. However, this impression was quickly to change as it appeared that Oman and the U.S. had already decided to enter in FTA negotiations at the time of the TIFA signature. This was clearly stated in a presentation held by the MOCI on July 21, 2004; two weeks after signing the TIFA, and attended by representatives from different ministries, where it was announced that Oman was intending to enter in FTA negotiations with the U.S. This presentation came even before the first meeting of the Omani-U.S. Council for Trade and Investment which was created as the result of the TIFA and held in Washington in the period 20-21 September 2004. This meeting was the first starting point of the FTA official discussions. Representatives of Omani business community participated in that meeting. In short, the Oman-U.S. TIFA was no more than a bureaucratic requirement to start the FTA negotiations.

One interviewee described his experience in the Omani-U.S. Council meeting as no more than an obligatory formal attendance on behalf of his ogranisation; the Omani Chamber of Commerce and Industry (OCCI). The interviewee was chosen by the OCCI to attend the meeting but without knowing much of the details of the issues discussed. The interviewee added that the way the discussions were conducted further made the Omani team members less capable to effectively participating in the discussions. Firstly, most of the talks were made by the Minister of MOCI and the members felt that it was difficult to interfere or argue against his views. However, the U.S. team was headed by Catherine Novelli, the then Assistant USTR for Europe and the Mediterranean. Novelli's comments were strong and sounded as if she wanted the Omani team to abide by the U.S. demands. But, unlike the Omani team whose members were only listening to what the Minister was saying, Novelli followed a more constructive way of involving members of the U.S. team. The latter were waiting outside the room in which the Council's discussions were held. For each topic of the discussions, Novelli started by providing a brief introduction and then asked the relevant group of her team to enter the room to further present their views. Instead of conducting mutual discussions, each U.S. group read out long lists of their demands in different areas and services, and required the Omani team to meet these demands if Oman wanted to start the FTA negotiations. The Minister of MOCI responded, by himself, to most of the U.S. questions, except when the issues entailed technical details such as in telecom when he allowed specialists to express their opinions.

Hence, from the beginning, the U.S. team appeared to be well-informed about Oman's trade and economy. They were more structured and had a clear idea about their demands. But, for the

Omani side things were gloomy and obscure. According to another interviewee, after the Council meeting the Minister of the MOCI held meetings with different U.S. high level officials such as the previous U.S. Vice President; Dick Cheney. Details on the FTA negotiations were discussed during those meetings. The immediate period after the Council meeting and the visit of the USTR Robert Zoellick to Oman in the period 13-15 October 2004 witnessed increased enthusiasm by both countries to start up the FTA negotiations.

7.5.1.2. The view of the Ministry of National Economy

Interviews revealed that Oman's preparations for the FTA negotiations were very modest and could never match those made for the WTO. Given the complex and comprehensive nature of the FTA, these preparations were not enough and there was a big and unjustifiable rush to start the negotiations and finalise them within a short period of time. No feasibility study was conducted to explore the potential costs and benefits of the FTA on Oman's trade, its national industries, and businesses. Many interviewees believed that it was a politically driven agreement in the façade of trade and economics.

The interviews also revealed that Oman's preparations focused mainly on studying the U.S.-Bahrain FTA as it was the last agreement signed by the U.S. with a MEFTA country, and Oman's FTA would not be of a much big difference. The MOCI prepared a summary of the contents of the main chapters of the Bahrain-U.S. FTA and Oman's position in relations to each chapter. Then, in December 2004, the MOCI sought to know the views of the Ministry of National Economy (MNE) about how Oman could learn from Bahrain's FTA to maximise the benefit of the negotiations and determine the best position that Oman should undertake during the negotiations. One interviewee revealed that the MOCI wrote to the MNE not to take their opinions about whether or not, it was advisable for Oman to negotiate or sign the U.S. FTA, because a political decision seemed to have already been taken on that, but to know their views on what should be the focus of Oman in the negotiations.

Two interviewees explored that the MNE was not particularly enthusiastic about the U.S. FTA simply because the U.S. was not an important market for Oman's exports, unlike the UAE or Saudi Arabia, which were the major trading partners with Oman on non-oil imports and exports. This implied that at least in the short run, Omani exports would not benefit from the U.S. FTA. Any benefit for the Omani economy, if there was to be any, could only be realised in the medium or long term. Such benefits would depend much on the nature of the FTA itself and the exceptional privileges that Omani exports would entertain as a result. The interviewees added

that the MNE expressed its big doubt that the U.S. FTA would provide any special treatment for Omani exports, particularly when considering the fact that the U.S. had been wondering around the world to sign as many FTAs as it could. The MNE also expressed its concerns about the capability of Oman to negotiate head to head with the U.S. The latter would try to maximise its benefits and would not take into consideration the impact of that on Oman's trade and people. Oman should realise this fact before the start of the negotiations. The MNE also advised the MOCI not to rush into the negotiations and spend more time studying the potential costs and benefits of the FTA particularly in relation to trade in services, labour, and government procurement.

However, the interviews exposed that the MNE's views did not change the enthusiasm towards the FTA. The MOCI took more speedy steps to prepare for the negotiations. Meetings headed by the Minister of Commerce and Industry and attended by representatives from other ministries and business community, were held in January and February 2005. It was decided to form different negotiating teams and each team was assigned to study one or two chapters of the Bahrain-U.S. FTA. This was because the U.S. regarded the Bahrain's FTA as a model for GCC countries and would be used as a basis for any other FTA negotiations with GCC countries. The interviews further revealed that the heads of the teams were carrying out the bulk of the work of studying and analysing the Bahrain-U.S. FTA, as they were required to present their findings to the Minister of Commerce and Industry. Some team members claimed to be too busy and were not fully dedicated to prepare themselves for the negotiations. One interviewee; a team leader, commented that he could not rely on his team members because they always pretended to be busy and had to do most of the work himself as he did not want to be seen as incapable of running the team!

7.5.1.3. The visit to Bahrain

The interviews also revealed that a delegation comprised of members from the MOCI, Ministry of Manpower, Ministry of Legal Affairs, Royal Oman Police (Directorate General of Customs), and Telecommunications Regulatory Authority, visited Bahrain in the period 7-9 February 2005. The aim of the visit was to learn from Bahrain's negotiating experience with the U.S. before the first round of Oman-U.S. FTA negotiations that would be held in Muscat in the period 12-14 March 2005. The visit was regarded quite important because Bahrain had the very latest experience in U.S. FTAs' negotiations and Bahrain's FTA was considered as a model for Oman and any other GCC countries' FTAs with the U.S. The interviewees described the visit to Bahrain

as very useful. The following paragraphs summarise the interviews' results about the outcomes of the visit to Bahrain.

The Bahrainis advised that Oman should establish a coordinating team to act as a controller of the negotiations. The coordinating team should have full, direct, and immediate access to all other groups of the team via the internet. Any information forwarded to the U.S. side should only be made via the coordinating team. The Bahrainis also advised that Omani negotiators should not take defensive attitudes nor should talk in Arabic with each other during the negotiations, as that would irritate the U.S. negotiators and would not look professional. If anyone had anything to discuss, it would be better to break the meeting and go outside to talk. Omani teams should identify things that they could accept, those they could not accept, and those that they could bargain on. There also should be frequent meetings between group leaders to discuss how negotiations were going. Other advices were provided to the Omani delegation by different Bahraini negotiating teams in different specific areas.

The Omani delegation learnt from the Bahrainis that goods produced in Bahrain would receive the benefits of the U.S. FTA if they had undergone a substantial transformation with at least 35 percent value added. The Bahrainis mentioned that negotiations on rules of origin were very difficult and advised Oman to accept no less commitment than what was given to Bahrain. They also mentioned that their FTA could allow Bahrain's national industries to utilise inputs from other Middle East countries that have FTAs with both Bahrain and the U.S. as Bahrainis original inputs. However, this regional accumulation would not be automatic and would be subject to future negotiations between both sides.[15]

Bahrain advised Oman to prepare very well for its negotiations with the U.S. on services, particularly on telecom, because U.S. negotiators were very difficult, complicated, and very detailed. Also, the FTA, unlike the WTO, used the negative list approach, which meant that all types of services were automatically subject to the FTA regulations except those listed in the negative lists. This meant that the Bahraini teams had to identify all the sensitive services that they did not want to make subject to the FTA regulations. This was a complicated task and the Bahrainis advised Oman to use their negative list as the basis of Oman's negative lists due to the similarities of the economies of the two countries. The Bahrainis also mentioned that the issue of gambling services was brought up by the U.S. negotiating team, but Bahrain refused to legitimise

[15] The Oman-U.S. FTA entails similar arrangements on these issues.

these kinds of services due to religious and social reasons. This refusal was clearly stated in exchange letters between Bahrain and the U.S.

The researcher notes that the above-mentioned two letters are made available in the USTR's website, but it is worth-noting that the first letter was sent on September 14, 2004 by the Minister of Finance and National Economy of Bahrain to the USTR Robert Zoellick in which the Minister emphasised two issues.[16] The first is that regulation of gambling and betting services that are aimed to achieve the objectives of protecting public morals, preventing fraud, and deterring crimes *will generally fall within the exceptions provided under subparagraphs (a) and (c)(i) of Article XIV of GATS*[17]. The second is that in Bahrain, *all gambling and provision of gambling services is prohibited and treated as criminal offense*. The USTR confirmed in his response this understanding.

However, under the Oman-U.S. FTA, there are no such letters exist, nor did Oman exclude gambling and betting services from any of its negative lists. This automatically implies that these services, as based on "negative list" approach, will be open and subject to the FTA regulations. The researcher raised the issue with two interviewees from the MOCI and the MNE, enquiring about whether the issue was discussed during the negotiations but no clear answers were provided. The situation for Oman under the WTO is better and clearer as, based on the "positive list approach", Oman made no obligations in its schedule of commitments to open up gambling and betting services. However, the U.S. is obliged to do so as these services are included in its schedule of commitments. These services, particularly online gambling, are regarded very important for many U.S. states revenues (Forum on Democracy & Trade, 2008). One of the famous cases of disputes over gambling and betting services under the WTO has been the one between the U.S. and Antigua. The Appellate Body found that the U.S.' Interstate Horse Racing Act (IHRA) was in violation of the U.S.' GATS commitments because it did not permit remote betting on horse races; i.e. betting from other countries into the U.S. via the internet. Hence, the Appellate Body decided that the IHRA discriminated against foreign gambling companies. The

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[16] The initiative of writing this side letter was taken from the Minister Finance and National Economy of Bahrain. But, in the case of Oman, it is noticed that all side letters about specific understandings were initiated by the USTR. The Omani Minister of Commerce and Industry agreed to these understandings as stated in the USTR's letters.

[17] Article XIV of the GATS is titled a" General Exceptions", which refer to measures that can be taken by a WTO member to achieve certain objectives that are listed in subparagraphs; a, b, and c.

- Subparagraph (a) is about measures that are *necessary to protect public morals or maintain public order.*
- Subparagraph (c) (i) is about measures that are *necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of [the GATS] including those relating to; (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts.*

U.S. attempted to use the clause of "protecting public morals" as per Article XIV (a) as a legal excuse for this discrimination but it was not successful. However, as the FTA is based on a negative list approach, Oman, in my view, is obliged to permit all types of gambling and betting services in its territories.

In telecom services, the Bahrainis described U.S. negotiators as very tough, would request a very high level of commitments, and would focus on issues such as; the independence, transparency, and accountability of the Telecommunications Regulatory Authority (TRA). U.S. negotiators were also keen to know whether decisions were published or not, and whether there was a limitation on ownership. Bahrain also advised Oman that the U.S. would seek to escape from any obligations to establish infrastructure by concentrating on universal services. Bahrain was very clear in this respect and required U.S. investors to establish infrastructure in Bahrain and advised that Oman should follow suit. Bahrain also advised that its TRA hired a special consultant from the U.S. to advise specifically on the telecom chapter of the FTA for a period of one month.

Bahrain informed that its negotiations on GP were very tough and advised that Oman should prepare itself for this. Bahrain recommended the following advice. Firstly, the GP negotiating team of Oman should include experts on GP procedures of Oman and should have enough experience in the laws of GP. Secondly, Oman should make a very thorough review on U.S.' GP commitments in other FTAs or other blocs, or under the WTO, so that Oman could consolidate its negotiating position and determine what was best for its domestic industries. Thirdly, Oman should thoroughly study the draft of the U.S. FTA once receiving it and identify any contradictions in its domestic laws with the text of the FTA. This would help Oman not to make any commitment that contradicted with its own laws. Fourthly, when making the entity offer, Oman should not include all the entities in the initial offer and should leave the sensitive entities till the end.

Fifthly, when setting up the procurement thresholds, Oman should assess the competition ability of the domestic goods in comparison with the U.S. goods and the volume of goods which were exported to the U.S. and whether these goods were the type of goods bought by the U.S. government. Sixthly, if Oman determined that its competition ability did not match that of the U.S., Oman should raise the procurement threshold to the highest possible amount so that its domestic goods and national industries could be protected from foreign competition. Bahrain

managed also to exclude services of printing holy Quraan and building holy places from the FTA obligations.[18]

7.5.2. Events that took place during the negotiations

The first round of negotiations on Oman-U.S. FTA took place in Muscat on 12-14 March 2005 and the second round was held in Washington on April 18-22, 2005. Negotiations then continued via digital video conferences and the internet and were concluded on October 3, 2005. Discussions with the interviewees, who participated in these negotiations revealed the following results.

7.5.2.1. The extent of readiness for the negotiations

Six interviewees believed that Oman's preparations for the FTA negotiations were very modest and did not match the importance and the complex nature of the FTA. As one interviewee put it; *this FTA was a life-long agreement and we should have prepared ourselves very well for it. But, unfortunately, we did not.* Interviewees felt that studying Bahrain's case was not enough and not every one took the effort to read it. Four interviewees complained that they were placed at a very disadvantageous position which restricted their negotiating ability and made them mainly listeners to the demands of the U.S. teams rather than being real negotiators. They mostly responded to what the U.S. teams wanted rather than negotiating on the substance of the FTA itself. This unfavourable position was the outcome of the following reasons, as explored by these interviewees.

Firstly, the FTA draft, on which the negotiations were based, was made and designed by the U.S. This meant that Omani negotiators had to deal with a massive and very detailed document that they had never participated in drafting it. Whereas, on the other hand, the U.S. teams were familiar with this document and knew much of its details. Secondly, apart from a very few people, who had negotiated Oman's accession to the WTO, most of the Omani negotiators lacked negotiating experiences and the skills. The FTA was the first agreement they ever negotiated. However, U.S. negotiators, on the other hand, were highly skillful and well trained, and had big experiences on trade negotiations. They pursued all possible means and tactics to achieve what they wanted.

[18] Oman made similar exclusions in regard to building holy places and the services of printing holy Quraan..

Thirdly, the interviews revealed that there was dissatisfaction amongst some Omani negotiators about not translating the FTA into Arabic and having to negotiate in English. This was not only because English was not their mother tongue but the FTA was a very complicated legal document and required high standard of English with legal knowledge and experience, which most Omani negotiators lacked. The legal team which was responsible for reviewing and advising other teams on legal aspects of the FTA originally consisted of around 5-7 legal experts from different ministries, but it appeared that only the leader of the team who had the legal background in English. Due to their Arabic background and inability to communicate in English, other members of the legal team could not participate effectively in the negotiations. When the first draft of the FTA was received from the U.S., they asked the Minister of Commerce and Industry for the necessity of getting professional translation of the Agreement into Arabic before starting the negotiations, but their request was never fulfilled. As a result, the leader of the legal team had to take the bulk of the work throughout the whole negotiations. Practically, she found herself responsible for the negotiations of many chapters of the FTA. These chapters were the general ones that applied to the whole FTA; such as the establishment of free trade area and definitions, safeguards, transparency, administration of the agreement, dispute settlement, exceptions, and final provisions. On top of that, this legal expert had often to break negotiations with the U.S. legal team in order to advise other Omani teams, upon their requests, on issues they were negotiating. Fourthly, whereas the Omani teams suffered from substantial shortage in legal expertise, each single U.S. team entailed a legal adviser of its own in addition to other experts of the legal team. This meant that U.S. negotiators ensured that whatever commitments they were making during the negotiations were instantly based on legal advice. But, the Omani negotiators did not enjoy a similar advantage. They had to await the only legal adviser to come to advise them.

Fifthly, many Omani negotiators were not fully involved in the negotiations. They were too busy with other work in their ministries. Some of them did not even have the chance to read the Bahrain's FTA. Others also mentioned that they only read their related draft chapters of the Oman-U.S. FTA few days before the start of the negotiations. Most of the Omani negotiators never had the opportunity to read about the U.S. trading policy and thus started negotiations with little knowledge about the U.S. and its FTAs with other countries. On the other hand, however, U.S. teams were fully briefed for the negotiations. Their level of preparations could never be compared to that of Oman. They studied the economic and trading systems of Oman in detail. Some interviewees expressed their surprises about the details the U.S. negotiators knew about Oman. This was particularly the case in the negotiations of government procurement,

telecommunications, labour, and financial services. One interviewee went as far as saying that U.S. negotiators were even better informed about Oman's commitments under the WTO than some Omani negotiators themselves.

As a result, Omani negotiators were placed in a position of mainly listening to U.S. demands and most negotiations were based on these demands. One interviewee interestingly expressed his experience of negotiations on the chapter of Cross-Border Trade in Services (chapter eleven) by stating that the U.S. team leader started the negotiations by reading out the whole chapter and when he finished he asked about whether the Omani team had any comments. Surprisingly, the team leader replied that his team did not have any comment and fully agreed with the content of the chapter.

Nevertheless, it is important to emphasise that some other negotiators on other issues of the FTA such as GP and telecom commented that despite all the difficulties they faced, they believed that they did their job very professionally. They managed to confront the U.S. negotiating teams on many issues and proved themselves to be tough negotiators. Sixthly, however, even those interviewees, who did not yield very easily, felt that they were placed by the MOCI under unjustifiable pressures to make concessions and not to make matters complicated for the U.S. teams. Not only that, some negotiators thought as if they were working in a vacuum as irrespective of how stubborn they were, the U.S. teams indicated that they could get things achieved from above; i.e. via the Minister of Commerce and Industry himself, and they did.

Seventhly, two interviewees commented that dividing negotiators into different teams did not help achieve effective negotiations as each team was effectively separate from the other. There were chapters that interrelated to each other very strongly such as government procurement, cross-border services, telecommunications, financial services, investment, and electronic commerce. Thus, negotiations on these chapters should have been undertaken by one large team rather than separate teams. But, unfortunately because they were negotiated separately members of each team felt that they were only responsible for the negotiations of their relevant chapters and should not be concerned about other negotiations. This was felt very clearly during some interviews as interviewees only spoke about their own related chapters. Some of them did not know what happened in other chapters even until the time of the interviews. Interestingly, for some interviewees this kind of specific assignment was good because it made them focused on certain issues without having to bother about anything else. They were given specific tasks and they fulfilled them. However, other interviewees did not share such opinions and argued that the

FTA was a comprehensive document and commitments in one chapter could easily affect other chapters. For example, Omantel would be affected by commitments on the GP chapter because it was the main telecom provider for all government entities. Omantel would also be affected by the chapter on telecommunications which sought to open Oman's telecom market beyond WTO commitments. Furthermore, there were also other general chapters such as those on dispute settlement, safeguards, administration of the agreement, and transparency which related to the whole FTA and whose details would have been very important to be aware of by any negotiator. But, unfortunately, it appeared that most of the Omani negotiators did not know much of the substance of these chapters.

Eighthly, the interviews revealed that some negotiators only attended the very initial stages of the negotiations and then disappeared. Many negotiators did not participate in the second round which was held in Washington. For some interviewees, this absence reflected the lack of enthusiasm of some negotiators. But others attributed it to the conclusion of most of the negotiations in the first round. Thus, there was no need for all negotiators to attend the second round, which would also reduce travel expenses.

Finally, Omani teams lacked a clear negotiating strategy and objectives. The interviews revealed that many negotiators did not know to what extent they could agree about the U.S. demands. The U.S. was asking for more liberalisation commitments in different sectors that went far beyond Oman's commitments in the WTO. As indicated above, the U.S. teams followed a very tactful strategy of negotiations. From the beginning, they listed their demands in each sector. Whenever the Omani teams felt unhappy to fulfill some of those demands, U.S. negotiators gave them the impression that they could get them approved via higher levels and they did so. Omani negotiators felt that the lack of transparency and the un-clarity about what should be achieved via the negotiations played an important role in weakening their negotiating position. On one hand they were instructed to achieve what was best for Oman, but on the other hand they were asked to make things easy for the U.S. teams. The whole situation was elusive, as one interviewee described it.

7.5.2.2. The GCC reactions during the negotiations

The issue of how other GCC countries reacted to Oman's individual negotiations with the U.S was raised in some interviews; particularly as such negotiations contradicted Articles 2 and 31 of the Economic Agreement of the GCC. Surprisingly, it appeared that some negotiators, including legal experts, were not aware of this contradiction. Other Government officials avoided talking

about this issue perhaps because they felt it was politically sensitive and touched the relations between Oman and other GCC countries. Two others commented that Oman was not the first to individually negotiate the U.S. FTA. Bahrain had done it before and Oman was negotiating its FTA in parallel with the UAE-U.S. FTA negotiations. Hence, as one interviewee commented, it seemed as if there was a conventional understanding to violate Articles 2 and 31 of the GCC Economic Agreement. As is indicated above, this hypothesis appeared to be valid because of the collective agreement amongst GCC countries in one of the meetings of the Financial and Economic Cooperation Committee in May 2005 to exempt U.S. FTAs from the obligations of Articles 2 and 31. However, it is important to emphasise that only very few interviewees knew about this exemption. One interviewee suggested that Saudi Arabia was quite unhappy about Oman's bilateral negotiations with the U.S. But, its reaction was not as critical as was the case with Bahrain because Oman was the third country to get involved in U.S. FTA negotiations. The interviewee added that perhaps Oman's negotiations convinced GCC members to reach a conciliatory agreement to exempt the U.S. FTAs from the obligations of Articles 2 and 31, so that any cleavages caused by U.S. FTAs between GCC countries could be healed.

Another interviewee revealed that this issue of GCC reactions towards Oman's unilateral approach to negotiate the U.S. FTA was raised during a public presentation made by the Omani Ambassador in Washington on January 14, 2005. Catherine Novelli asked the Ambassador about the extent to which would the dispute between GCC countries over the issue of negotiating and signing U.S. FTAs individually affect Oman's FTA negotiations. A similar question was forwarded by another person from the media. The Ambassador diplomatically replied, as explained by the interviewee, that GCC countries always discussed their own issues and problems among themselves. They all had interests in negotiating and signing U.S. FTAs because they all signed TIFAs with the U.S. The Ambassador emphasised that Oman was willing to go ahead to sign the FTA because it sincerely believed that it would improve the future of the trade relations between Oman and the U.S. The interviewee commented that the Ambassador attempted to avoid speaking about any disagreement amongst GCC countries on the Oman-U.S. FTA negotiations due to the sensitivity of the issue as it directly related to Oman's relations with GCC countries.

Moreover, one interviewee interestingly revealed that the UAE-U.S. FTA negotiations had been more difficult than Oman-U.S. FTA negotiations, particularly on the issue of labour. Foreign workers outnumbered national citizens of the UAE. Thus, permitting them to go on strike and form independent labour unions would have a serious security impact on the country. The

business community in the UAE was much more involved in discussing the potential impact of the U.S. FTA than was the case of Oman. It tried to convince policy makers that the U.S. FTA would not add much value to the economy of the UAE. Another interviewee disclosed that just after the first round of the Oman-U.S. FTA negotiations in Muscat, a delegation from the UAE visited Oman to agree on a common negotiating position of the two countries in the U.S. FTAs. But, Oman did not support the idea as it thought that its negotiations with the U.S. were more advanced as almost 80 percent of the issues were finalised! Thus, Oman did not want to associate its FTA negotiations to those of the UAE as that would merely delay the finalisation of Oman-U.S. FTA negotiations.

In addition, four interviewees thought that the UAE was better prepared for the FTA negotiations than Oman. When the project of the FTA negotiations was initiated, the UAE resorted to the Australians to learn from their FTA experience with the U.S. The Australians were quite critical as they believed that the U.S. would use all possible means to exploit their partners' markets. For two interviewees, learning from the Australian experience was a wise step because the Australia-U.S. FTA had already been in the implementation process and there would be some practical lessons to learn from. One interviewee interestingly explained that some U.S. team members during their first round of negotiations with Oman criticised the UAE negotiators for being complex and not being able to understand and appreciate the substance of the FTA as the Omanis did. But, for the interviewee, this was no more than a "tactful compliment", and simply reflected the fact that the U.S. had much greater difficulty in its negotiations with the UAE than Oman.[19] However, it is also worth-noting that two other interviewees commented that perhaps it was wise for Oman not to complicate its negotiations with the U.S. as it knew that the later it signed the FTA, the more complex it turned to be. In its negotiations with the U.S., it would be unlikely that the U.S. would give the UAE better deals than it did with Oman.

7.5.3. Prevailing issues during the negotiations

Six interviewees explained their negotiating experience in the FTA on specific chapters and outlined certain issues that were quite controversial during the negotiations. Results on these issues are outlined below.

[19] According to the USTR 2008 Annual Report (2009, p.123), the U.S. and the UAE have decided to postpone their FTA negotiations and seek to strengthen their existing TIFA agreement.

7.5.3.1. Legal issues

According to one interview, many of the Omani negotiators lacked the awareness and knowledge about how the actual terms, definitions, and clauses were legally phrased. Although some of them were specialists in their areas, they did not have the required legal background that would enable them to analyse the actual provisions of the FTA. This was very apparent in the definitions section of chapter one. For example, the definition of Oman's territory in the initial draft of the Oman-U.S. FTA was short, vague, and opened to different interpretations. The definition stated that the term territory for Oman meant *the territory of Oman as well as maritime areas, seabed, and subsoil over which Oman exercises, in accordance with international law, sovereignty rights, and jurisdiction.* Hence, the interviewee commented that, it was not clear what was meant by the expression *the territory of Oman.* Also, the definition did not include the sovereignty over the space. The leader of the legal team insisted on changing this definition, a request that was firstly opposed by the U.S. because the same definition was used in other FTAs. After different discussions, the U.S. agreed to alter the definition to read as following:

> territory means: (a) with respect to Oman, all the lands of Oman within its geographical boundaries, the internal waters, maritime areas including the territorial sea, and airspace under its sovereignty, and the exclusive economic zone and continental shelf where Oman exercises sovereign rights and jurisdiction in accordance with its domestic law and international law, including the United Nations Convention on the Law of the Sea.

The interviewee added that a controversy also rose over the definition of 'national', which was stated to mean *with respect to Oman, any person who is a citizen within the meaning of its domestic laws governing nationality.* The controversy this time was not on the wordings of the definition, but on a sentence mentioned in the Omani laws that governed nationality which stated *as may be amended from time to time.* The U.S. wanted Oman to take this particular sentence out of its domestic laws because it meant that any future changes in Oman would still be applicable to the FTA. But, the U.S. wanted the FTA to be implemented according to the existing Omani laws only. Any future changes to these laws should not automatically apply to the FTA and would depend on subsequent negotiations between the two parties. Nevertheless, the Omani legal negotiators refused to abide by the U.S. request as that would mean direct interference in the supreme sovereignty of the country and the rights of the Sultan to legislate domestic laws. Thus, Oman suggested that if the U.S. was affected by any new Omani legislations, either Oman would compensate the U.S. financially, or a negotiation would take place between the two parties after the issuance of the new laws to decide whether to continue with the FTA or not. The U.S.

promised to study Oman's proposal but it was not clear at the time of the interview what their position was.[20]

Furthermore, the interviewee spoke about what she perceived as the extreme complexity of the dispute settlement mechanism of the FTA, which was, in her views, far more complicated and difficult to understand than the one under the WTO. Whereas the WTO had only one mechanism of dispute settlement that applied to all agreements, the FTA contained around three different mechanisms of dispute; a) a general mechanism, b) special mechanism that only applied to investment, and c) special mechanisms that applied to labour and environment. The interviewee added that Oman should be worried about the possibility of a $15 million financial penalty being imposed if there were any breaches to the chapters of labour and environment.[21] The interviewee added that understanding all these mechanisms, making government institutions and local enterprises aware of them, and training Omanis on dispute settlement would be one of the biggest challenges facing Oman in the forthcoming future.

7.5.3.2. Labour issues

Four interviewees revealed that the Omani negotiating team was unjustly placed at a very defensive position in relation to labour issues. This was because of the strong accusation of the U.S. Democrats and some U.S. organisations such as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) about what they claimed to be bad labour records in Oman. The accusations included depriving foreign workers from the right to form unions, bargain collectively, and to go on strike. Oman was also accused of forced and child labour. Hence, rather than merely focusing its negotiations on the actual wordings of the chapter on labour, the negotiating team, along with other employees from the Ministry of Manpower, were involved in answering lists of questions about Oman's labour laws. One interviewee described the situation as Oman was a prisoner who was trying to prove that he was not guilty and the U.S. as both the prosecutor and the judge. Another interviewee assumed that the whole issue of labour was very difficult for the Government of Oman as it was always very careful to reflect the best picture about its policies to the international world particularly in the fields of human rights. But, the FTA painted Oman as an oppressor and abuser of workers' rights.

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[20] Although the FTA was officially signed on January 19, 2006, the U.S. refused to start the implementation unless Oman changed all its domestic laws to be line with the FTA; a process that proved very complicated for Oman as the FTA was not put into force until January 1, 2009.

[21] See chapters five for the researcher's analysis on dispute settlement and labour standards, and chapter six for the analysis on investment and disputes over investment measures.

Paradoxically, two other interviewees thought that this criticism of Oman's labour policy further strengthened its enthusiasm to sign the FTA. This was because not signing the FTA due to criticism on its labour policy would be seen as mortification for Oman. Thus, not only did Oman seek to defend its position on labour issues, but it also adopted softer negotiating stands and agreed with most of the U.S. demands so that the process of signing the FTA would go ahead. Signing the FTA would mean that the U.S. became satisfied and convinced about Oman's labour policy as well as accepting Oman as a preferential trading partner.

The interviewees added that the actual negotiations on chapter sixteen of the FTA were quick. All issues were concluded before the start of the second round of the negotiations. The Omani negotiating team accepted the chapter as it was, except only with very few points where the team proposed to change or re-phrase and the U.S. initially agreed to apply these changes. Surprisingly, however, the researcher finds out that some of these points were not considered in the final version of the FTA. For example, the interviewees said that the Omani team objected to the last sentence of the second paragraph of Article 16.1, which stated;

> Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 16.7 and shall strive to improve those standards in that light (Article 16.1.2)

The interviewees explored that this paragraph required that the labour laws of both parties to be consistent with the ILO conventions, but the last sentence: *and shall strive to improve those standards in that light* posed an obligation to improve domestic labour standards. Hence, not doing so could be seen as not fulfilling the requirement of the Article. Thus, the Omani team suggested that this sentence to be taken out or rephrased. The U.S. team agreed to do so but only after consulting their legal advisers in Washington. Nevertheless, the researcher finds that this sentence has remained in the final version of the FTA as it was in the first draft; i.e. nothing has changed. This means that Oman's proposal was not taken into account.

Not surprisingly, five interviewees, government officials, defended Oman's labour policy and described workers' conditions and labour standards in Oman to be much better than in many other countries. Interviewees emphasised that because of its confidence on its labour policy, Oman managed to defend itself very well and provided convincing answers to most of the U.S. questions and accusations. For instance, the U.S. accused Oman of not allowing workers to form unions or bargain collectively which did not conform to ILO conventions. But, Oman responded that this accusation was based on the old version of labour law and thus, it was no longer the case

in the new law published in 2003 and the subsequent ministerial declarations which clearly allowed workers in Oman both rights. In different occasions, Oman emphasised that workers were free to form their own committees and employers were not allowed in any way to interfere in the selection of the committees. The Ministry of Manpower had only to be notified one month prior to each meeting of the general assembly of any committee with a copy of the invitation letter, agenda, documents, and papers. Also, there had to be a representative of the Ministry of Manpower in the meeting. However, the U.S. still criticised these requirements and regarded them as interference from the Ministry in the work of the committee, but Oman did not agree with that and argued that because these committees were newly established, the Ministry would only act as an advisory body.

One interviewee also revealed that the U.S. further accused Oman of not allowing workers to engage in lawful strikes and 2004 witnessed no strikes, which also did not conform to ILO conventions. Oman responded that although it was true that the labour law of 2003 contained no provisions that legalised strikes, it also contained no provisions that prohibited them.[22] Hence, this ultimately meant that Oman allowed lawful strikes. Also, the U.S.' claim that there were no strikes in 2004 was not accurate as there were around 6000 workers engaged in over 30 cases of strikes in 2004[23]. The interviewee added that Oman clarified to the U.S. that the Ministry of Manpower played an important mediatory role to resolve disputes between workers and employers and would continue to do so.

Furthermore, two interviewees explained that the U.S. accused Oman of not adopting enough measures to stop the practices of forced and child labour, and claimed that the ILO had accused Oman of such practices. The U.S. also criticised Oman's labour law for imposing a very small fine of only 100 Rials ($287) in cases of violation of provisions related to child labour. However, Oman firmly denied all of these accusations and emphasised that not only had it ratified ILO conventions[24] on both forced and child labour, but it also apply all the necessary measures to prevent any practices of child and forced labour. The fine of 100 Rials would be imposed on exploitation of any child and not for each case of a company. This fine would only be applied for the first time and if the violation persisted, the case would be referred to the court. Oman further emphasised that all children in Oman received free education, health services, and social

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[22] Royal Decree no. 74/2006 came to modify Article (107) of the 2003 Labour Law to allow for "peaceful strikes". (See the researcher's analysis on this issue in chapter five)

[23] Actual figures of the Ministry of Manpower shows that in 2004 there were 33 cases of strikes and the total number of workers engaged was 5988.

[24] ILO Conventions on forced labour are 29/1930 and 105/1957 and on child labour are 139/1973 and 182/1999.

protection. All expatriate workers who were below 21 years old were not allowed to enter Oman for work, which would further assure that worst child labour did not exist in Oman. Oman also explained that there was no single case of forced or child labour stated by the ILO. But, the latter was only concerned about camel jockeys and Oman elucidated that those who were involved in camel jockeys were Omanis. They did not work for anybody on wage basis and used camel jockey as a sport. Oman also conditioned that the age of camel jockeys to be not below 18 years old.

7.5.3.3. Market access

Three interviewees revealed that negotiations on chapter two of the FTA were also fast and most points were agreed about before the second round of the negotiations. The interviewees cautiously spoke about subjecting highly socially and religiously sensitive products to the FTA arrangements such as alcohol, cigarettes, and pork meats. They felt that these products should have never been included in the FTA irrespective of the costs of that. Allowing these products to freely enter the Omani market would mean that the country would loose its Islamic façade. Social unrest and criticism already existed amongst many people who believed that Oman had gone too far in what they termed as "westernisation process". One interviewee revealed that the Omani negotiating team asked the U.S. in the first round to exclude pork, alcohol, and cigarettes products from the obligations of the FTA, for social and religious reasons. This was the case under the WTO and should also be the case in the FTA. However, the U.S. refused to do so because the FTA is meant to be a WTO plus agreement and a means of liberalising all types of products. However, after a lot of discussions the U.S. team agreed to liberalise these products after 9 years of the implementation of the FTA, as had been the case with Bahrain as well. Also, another interviewee revealed that during the preparation of the first round, the Ministry of Oil and Gas expressed its concern about subjecting certain oil, gas, and chemical related products to the obligations of the FTA, as this could have negative impact on locally produced products. However, the U.S. negotiating team refused to exclude them from the FTA. Thus, they would be liberalised immediately when the FTA would be in effect.

Another interviewee revealed that the Omani team tried to bargain with the U.S. on Article 2.11 which required both parties to support a WTO agreement towards the elimination of agricultural export subsidies. Under the WTO, Oman put it clearly that it did not provide export subsidies for agricultural goods and thus there was no need for Oman to support a WTO agreement on the

elimination of those subsidies.[25] Because of that, the Omani negotiating team suggested that Oman would support the U.S. to reach a multilateral agreement on the elimination of agricultural export subsidies, if the U.S., in return, supported Oman's demands in the WTO. Oman was one of the Recently Acceding Members (RAMs) to the WTO; a group that entered the WTO after 1995 and made more liberalisation commitments than any other countries. The RAMs called for not providing any more commitments nor should they be asked to do so in the DDA negotiations. The U.S. promised to study Oman's requests, but, it remained unclear for the interviewee what was the U.S. response. Thus, whether or not, the U.S. would really support Oman at the WTO would remain an open question. However, Article 2.11 was included in the final version of the FTA and Oman is now obliged to abide by it.

Another interviewee; a senior government official, expressed his concerns about Article 2.4.1 of the FTA whose wordings could mean that Oman would no longer be able to grant other trading partners, including GCC members, any new waiver of customs duties beyond the FTA. The Article states that;

> Neither Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfilment of a performance requirement (Article 2.4.1, Oman-U.S. FTA).

The interviewee added that some concerns at GCC level already rose around Article 2.4.1 as whether it applied to GCC countries. Oman forwarded the question to the U.S. whose answer came even more illusive. The U.S. outlined that the Article would not affect duty waivers as long as they were not based on performance requirements. But, this also ultimately meant, as the interviewee commented, that Oman would not be able to adopt new duty waivers to GCC countries if they were based on performance requirements.

7.5.3.4. Textiles and clothing

Three interviewees explained that negotiations on textiles and clothing – chapter three of the FTA – were very complicated and contained too much details, that were, for some negotiators, difficult to understand, particularly those provisions which related to the rules of origin and safeguards. The Omani team explained to the U.S. how textile industry in Oman revived and prospered under the old quota system because of the investments of Asian producers who sought to produce beyond the allocated quotas in their countries. However, as the quota system was wound up, most of the textile factories closed down. Oman, as any other GCC country, did not

[25] See the researcher's analysis on this issue in chapter five.

have any local resource endowment to support the textile industry and thus, it would be difficult for Oman to fulfil the required conditions of the rules of origin. However, all this explanation did not yield much benefit, as one interviewee commented, and Oman had to abide by Chapter three whose final version did not change much from its draft.

Two interviewees; a government official and a business person, praised the negotiating team on textiles, as they managed to convince the U.S. team to agree to exempt a certain quantity of Omani textile exports to the U.S. from the rules of origin. However, the interviewees did not know much detail about this quantity. Hence, the researcher reiterates his previous findings that the exempted annual quantity of 50 million square meters would not entail all types of textile products as the interviewees might have thought, but would only be restricted to cottons and man-made fibre apparel goods. Also, the exempted quota would only be applied for a period of ten years, which is not long enough to re-establish a whole industry. If new factories are established as a result of the quota, they will have after the end of the 10-yerar period to undergo the same difficulties experienced under the WTO. Furthermore, the issue should not be looked at as a special favour for Oman nor as a result of negotiating skills of the Omani team simply because Oman was not the only country that got from the U.S. this exempted quota, other FTAs partners such as Bahrain and Morocco have got it as well with even better offers and conditions.[26]

According to another interviewee, a government official, some local and foreign investors already showed some interests about re-establishing their textile factories in Oman to benefit from the exempted quota. The interviewee considered this enthusiasm as a promising indication for the revival of the textile industry in Oman. However, as is indicated in chapter five, Oman should be careful not to place much hope on the revival of the textile industry in light of the exempted quota because this exemption will only be for ten years. Also, this exemption is not only entertained by Oman. Most other U.S. FTA partners, if not all of them, have got it. This means that Omani textile exports to the U.S. market will have to face severe competitions from countries such as China and India which can fulfil the U.S. rules of origin and possibly from other U.S. FTA partners who are exempted from the rules of origin as Oman. Survival of Omani textile industries in this era of fierce competition will be difficult to achieve.

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[26] See the researcher's analysis on textiles and clothing in chapter five.

7.5.3.5. Government procurement

Two interviewees described their negotiating experiences on the GP chapter to be very difficult and tough. It was the first time for Oman to get involved in these kinds of negotiations. Although it managed to avoid entering such negotiations under the WTO, it could not do so under the FTA. The U.S. made the GP chapter part and parcel of their FTAs. The interviewees recognised the differences in negotiating skills and experiences between them and the U.S. team. The latter sought all different means to subject as many Omani government entities as possible to the FTA, including the sensitive ones such as those responsible for defence and security, and other establishments where the government had some shareholdings. But, the Omani team did not agree with that and fought very hard to reduce the market access list of the Omani entities. They believed that they managed to achieve good success.

However, other five interviewees, negotiators on other issues, business people and experts in some government institutions, felt that Oman had agreed about subjecting far too many government institutions, 38 entities, to the FTA. They described the negotiating team on the GP chapter as not strong enough and lacked the experiences and the skills. Two interviewees added that not subjecting government entities responsible for defence and security could not be regarded as big achievements because it was commonly understood that these were sensitive entities and countries would not agree to subject their procurements to FTAs obligations. The U.S. itself would not sincerely like to subject its defence and security purchases to the FTA. If the U.S. had shown its readiness to open its defence and security procurement during the negotiations, this would have only been a tactful move to convince Oman to do the same. The U.S. knew that there was no way that Omani products and businesses, if any, would be able to bid competitively for U.S. procurements of defence and security procurements.

Nevertheless, those who negotiated the GP chapter considered themselves as efficient negotiators as they did not yield easily to the U.S. demands. Initially, they did not agree to subject all the 38 entities, but the U.S. managed to get them approved directly by the Minister of Commerce and Industry. This was the way U.S. negotiators used in their negotiations with smaller countries. Whenever they could not get their demands via negotiations, they sought to get them achieved through higher levels. The interviewees further clarified that on the first day of the negotiations they only presented a very small list of government entities that they agreed to make subject to the FTA rulings. But, the U.S. did not agree with that and presented a more expanded list of various government and non-government entities they wanted Oman to make subject to the GP chapter. Not only did the list include more ministries, but also other government agencies, banks,

companies in which the government had shareholdings including oil and gas companies and refineries.

The Omani team solidly refused to agree about subjecting all of these institutions to the FTA, because Oman was still in its development process and needed all means to develop its national industries. Also, some entities such as Oman Air, Oman Telecommunications Company (Omantel) and Oman Methanol Company, and Salalah Container Port, were not fully owned by the Government. They were other shareholders and the Government could not simply take decisions on their behalf. Even in other fully government owned companies such as Oman Gas Company and Oman Refinery Company they worked on commercial basis and were subject to the commercial laws of Oman. However, the U.S. team proved highly inflexible in this matter and threatened to withdraw some of the already agreed terms on other issues such as thresholds. In the end, the U.S. team managed to get its proposed list agreed with the exceptions of some few entities such as the Central Bank of Oman and other companies in which the Government did not have full ownership such as Oman Telecommunications Company (Omantel) and Oman Methanol Company, and Salalah Container Port.

The researcher asked the interviewees about the two exchanged side letters between the USTR and the Minister of MOCI in January 2006 stating that the Government of Oman was prevented from influencing the procurement of three entities; namely Omantel, Petroleum Development Oman, and Oman Liquefied Natural Gas, and emphasising that the understanding constituted an integral part of the FTA.[27] Surprisingly, the two interviewees, as well as others, appeared to have no idea about this letter. They confirmed that during the negotiations it was agreed that these three establishments would not be included in the lists. One interviewee commented that the negotiating team did their tasks to their best level and their job ended when the negotiations were concluded. Any thing happened after that was not of their responsibility.

7.5.3.6. Telecommunications

Interviews with two government officials revealed that negotiations on the telecom chapter were very difficult and one of the last chapters to conclude. Before the start of the negotiations, the Omani team managed to study the case of Bahrain and Morocco, which made them aware about the nature of the chapter on telecom before receiving the first draft of the Oman-U.S. FTA. One of the two interviewees explained that these preparations alerted the Omani team that the U.S. objective was not only to liberalise telecom markets of their trading partners but went far beyond

[27] See the analysis on the issue of government procurement in chapter six.

that. The chapter on telecom demonstrated how aggressively ambitious the U.S. to dominate telecom markets of its partners, which made the Omani team highly concerned about the future of Oman's telecom sector once the FTA was put into practice. U.S. FTAs required that foreign suppliers had to be given equal access to the incumbent network and utilise its infrastructure. Interestingly, another interviewee commented that the Morocco and Bahrain's FTAs made Oman's negotiations very difficult, as whenever the Omani team objected about a particular provision, the U.S. claimed that these provisions were included either in the FTA with Bahrain or with Morocco, and thus, it was difficult to treat Oman as an exception.

Furthermore, the two interviewees explained that Oman, under the WTO, made higher commitments than many other members. Oman committed itself to fully liberalise its telecom sector by 2005 and agreed to permit the establishment of wholly foreign owned subsidiaries. In light of these commitments Oman took tangible, yet well studied and cautious, steps towards the liberalisation of the sector. Royal Decree No. 30/2002 authorised the establishment of the Telecommunications Regulatory Authority (TRA) to regulate the sector and take the required actions to implement the WTO obligations. The TRA adopted a careful policy of liberalisation aimed to; a) promote infrastructure development and private investment in the sector, b) encourage fair competitions which would lead to better service choices for customers at competitive and affordable rates, and c) maintain an effective and well-defined regulatory regime consistent with international practices.

However, the two interviewees commented that the U.S. FTA did not help in achieving these objectives but rather sought to attain complete freedom from local regulations and open international traffic to any public telecom operator without any accountability, which contradicted Oman's telecom policy. Given their comparative advantages of advanced technology, U.S. telecom suppliers could easily provide their services in Oman without having to invest in the infrastructure of the sector. The FTA provided them with the right to access the existing network and utilise the incumbent infrastructure. This type of service provision, as one interviewee described it, would not add any tangible value to the economy of Oman nor would it help achieve the TRA's objective of developing the infrastructure of the sector. But, rather it would affect the existing Omani telecom service suppliers. These concerns were raised on different occasions to the Minister of Commerce and Industry by the Omani negotiators, who put it clearly that the FTA would affect Oman's policy to balance between liberalising the telecom market and ensuring that the incumbent, Omantel, was not harmed by the influx of foreign

competition. However, these concerns were not enough to convince policy-makers to call off the FTA negotiations.

One interviewee described the U.S. negotiators on telecom as very difficult and highly inflexible. They were very well-informed about Oman's telecom sector and its regulations, which further made the negotiating task of the Omani team more difficult. Rather than give and take type of negotiations, the U.S. forwarded lists of questions about Oman's telecom policy. The U.S. team accused Oman for not taking enough steps to liberalise the sector as per its commitments to the WTO particularly in regard with licensing. The Omani team responded that the Government was fully committed to the liberalisation of the telecom market in accordance with its WTO commitments but this liberalisation had to be taken gradually and cautiously to maximise the advantages of the liberalisation process and minimise its costs. Thus, the Government had decided that for the next few years there would be at least two fixed and two mobile operators. After that other operators would also be able to enter the market in the future. However, the U.S. regarded this decision of limiting the number of operators as anti-free trade and argued that the TRA should leave market forces to decide the number of operators. The Omani team responded that the TRA policy was to welcome competition so as to put competitive pressure on the incumbent and provide better services for customers with lower prices but at the same time competition should be directed to investment in infrastructure as the fixed penetration levels were still low. The Omani team emphasised that the TRA would not seek to limit the number of operators, but rather encourage them. The duopoly structure; two mobile and two fixed operators, did not necessary imply that the market would be limited to two operators only, but the number could increase in the future.

Furthermore, the U.S. accused the TRA for not being fully independent of the Government as it was required by the WTO. The TRA had been chaired by the Minister of Communications and Transport (MCT), who also chaired the Board of Directors of Omantel. The U.S. regarded this co-position as a clear conflict of interests. The Omani team responded that the Government had already been considering this matter and the Minister of MCT would no longer be the Chairman of Omantel. However, the U.S. team still regarded the chairmanship of the Minister of MCT to the TRA as not serving its full independence. The Minister of MCT would naturally seek to serve the interests of the Government, which was the biggest shareholder of the incumbent,

Omantel[28]. The U.S. sought to convince the Omani team that the Government shareholding in Omantel should be privatised. The Omani team responded that privatisation of Omantel was an economic decision related to the company itself and the negotiating team had nothing to do about it. The TRA also had no authority to dictate Omantel to sell off its Government shareholding to the public. One interviewee commented that the U.S. kept urging the Government to privatise its shareholding in Omantel, as a result of which the Government had seriously thought of approaching some regional players such as "Itisalat" of the UAE to be a strategic partner in Omantel. Another interviewee explained that the Omani negotiating team initially used to include a member from Omantel, who attended all the preparatory meetings. However, once negotiations started the U.S. requested the MOCI to exclude Omantel's representative because the FTA was based on government-to-government negotiations. Omantel was regarded as a private company and thus it should not be involved in such negotiations.

7.5.4. Post-negotiations issues

7.5.4.1. The language of the FTA

Negotiations were concluded on October 3, 2005 and the FTA was signed by USTR Rob Portman and Minister of MOCI on January 19, 2006. Interviews revealed that the FTA was signed in the English language only which took some interviewees to surprise as most other Oman's international agreements were signed in both English and Arabic. For three interviewees, this further confirmed the speedy attitude of Oman and its enthusiasm to sign the FTA by all means. Until the time of the interviews, the FTA had not been translated into Arabic nor had it been published in another website than the USTR website. This meant, as one legal expert commented, that the FTA would be put into effect while the business community and the people of Oman knew very little about. The interviewee added that this, in itself, contradicted the transparency requirement of chapter eighteen of the FTA[29]. Another interviewee commented that Bahrain appeared to be more professional in this matter than Oman as Bahrain had fully translated its FTA into Arabic and published it in different websites.

Surprisingly, however, the last paragraph of chapter 22 titled "final provisions" clearly states that the FTA was signed in the English and Arabic languages and in the *event of a discrepancy*

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[28] The Minister of Communications and Transport is no longer the Chairman of the TRA. In August 2007, this position became to be held by the Secretary General of the Ministry of National Economy, Mohammed Al-Khusaib (TRA, 2008).

[29] Article 18.1.1 of the FTA states that:

> Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

between the texts, the English language text shall prevail. But, unfortunately some interviewees did not seem to know about this paragraph but still confirmed that there was no Arabic version of the Agreement. One interviewee regarded this paragraph as misleading and cynically added that it would be natural for the English text to prevail in cases of discrepancy because in actual reality there was no Arabic text in the first place!

7.5.4.2. Reforming domestic laws

On September 26, 2006, President George Bush signed the Oman-U.S. FTA to become a law. This was followed by the Sultan of Oman issuing on October 15, 2006 the Royal Decree number 109/2006 ratifying the FTA. However, the FTA was not, until the time of conducting the interviews, put into effect because the U.S. insisted that Oman must reform all its relevant domestic laws, regulations, and policies before the implementation of the agreement. This goes as per requirement of Article 22.5, which states that the FTA shall only *enter into force 60 days after the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures.* [30]

Interviews revealed that this obligatory process of comprehensively reforming all related domestic laws had been very strenuous and long for all Government bodies that were involved in the reforms, particularly the Ministry of Legal Affairs. Despite all the efforts to conduct these reforms, the U.S. continued to be dissatisfied with the modified versions of Omani laws. The U.S. wanted these laws to take out any wordings that referred to the support of national industries and products. Two interviewees regarded this U.S. involvement in the reform process of Omani laws as a direct intervention in the sovereignty of Oman. The U.S. would naturally seek to adapt Omani laws in a way that suited its interests. It appeared as an endless process and put the MOCI in awkward position. The MOCI had sought very hard to conclude the negotiations and sign the FTA within a very short time span, which was seen as a "big achievement". But, the hurdles of reforming the domestic laws made this achievement intangible one. Therefore, the MOCI exercised a lot of pressures on different ministries, particularly the Ministry of Legal Affairs, to carry out the reforms as quickly as possible and urged them to agree with the U.S. comments and modifications, so that any further delay could be avoided. One interviewee interestingly stated that when the FTA was signed in January 2006, the MOCI initially agreed with the U.S. that in order to avoid delays in implementing the FTA, a sentence would be included in the Royal Decree ratifying the FTA which would clearly give the FTA

[30] The reform process of domestic laws lasted for about three years and the FTA only entered into force on January 1, 2009.

supremacy over domestic laws and would confirm that any other laws that contradicted the provisions of the agreement would not apply to it. However, when the Royal Decree was issued, the U.S. claimed that this sentence was not enough to start the implementation and Oman would have to reform its domestic laws before putting the agreement into force; a very strenuous process that lasted for three years. Appendix 7.1 presents a comprehensively chronological account for Oman's involvement in the WTO and the FTA.

7.5.4.3. EU- GCC FTA negotiations

Interviews with two government officials revealed that Oman and Bahrain-U.S. FTAs further complicated the long lasting European-GCC FTA. The EU demanded no less treatment in all aspects than what was accorded to the U.S. For instance, one interviewee explained that the GCC fought very hard not to subject religiously and socially sensitive products such as alcohol and pork meats to their FTA with the EU. This also went in line with their commitments in the WTO. The EU appeared once to appreciate the GCC position. However, Oman and Bahrain-U.S. FTAs frustrated the EU and made it demand no less treatment than what was accorded to the U.S. But, Saudi Arabia, in particular, solidly refused to freely allow products such as alcohol or pork meats into the Saudi market, as doing so would provoke the sentiments of its people. The issue remained unsolved until the time of the interviews. Similarly, the EU demanded better market access into the GP market of GCC countries in a way that should not be less than what was accorded to the U.S. in its FTAs with Bahrain and Oman. The EU became even less flexible on labour and environment issues.

7.6. Impact of the FTA on Oman's trade

Interviewees were divided about the extent to which Oman's trade would benefit from the U.S. FTA in the future. However, given the lack of knowledge by many interviewees about the substance of the FTA and its different provisions, it is important to note that these views were no more than an expression of the interviewees' personal opinions and expectations. Four interviewees explored notable apprehension about the impact of the FTA on Oman's trade. But, other five interviewees thought that the FTA could work for the benefit of Oman, provided it was used and exploited properly. An elaboration of these views is provided below.

7.6.1. Positive opinions

Five interviewees held that the FTA could benefit both Oman and the U.S. provided that they exploited it properly. The FTA had prepared the legal ground for Oman and the U.S. to increase their trading and investment activities, but it would be up to them to put it into practice. Oman

would be able to export its products freely to the U.S. market and vice versa. Also, U.S. businesses would be more attracted to invest in Oman. This, in turn, would help the diversification and Omanisation objectives. In the same context, two interviewees proposed that Oman should establish a strategic plan to maximise the benefit of the FTA. The plan should focus on specific sectors where investment of U.S. businesses could add real value to the economy of Oman and help the advancement of the selected sectors such as information technology and petrochemicals. The FTA created the opportunity and it would be up to Oman to utilise it. These interviewees also considered that the FTA would help Omani businesses learn how to compete and survive in the real business world, without being spoilt by the Government's special care. It is important to note that these interviewees did not differentiate much between the FTA and the WTO. For them, the two trading systems would benefit Oman's trade and economy as they both called for trade liberalisation and open economy.

7.6.2. Negative opinions

Some other four interviewees thought that Oman would not gain much benefit from its FTA with the U.S. simply due to the big differences in the level of development between the two countries. Oman had very modest manufacturing capabilities that could enable it to establish well-branded and competitive exports in the U.S. market. On the other hand, the Omani market would be open to all types of U.S. products, including alcohol, pork meat, and cigarettes. U.S. products would enjoy free access and preferential treatment in the Omani market that imports from other countries did not enjoy. As a result, the Government of Oman would loose substantial amount of its current revenue generated from the high level of tariffs imposed on the sensitive products. According to one senior government bureaucrat, Government annual revenue from the tariffs and taxes imposed on alcohol related imports was more than OR 10 million (around $ 26 million). This amount was thought to even increase substantially in the coming years in light of the expected increase in the number of tourists and the establishment of new hotels. But, as a result of the FTA, substantial amount of this income would be lost.

Three interviewees clearly perceived the FTA as a threat to many of the existing national industries, which heavily depended on government procurement to survive and profit. But, as these industries would have to be treated on equal footing with U.S. investors and services suppliers, they would stand no chance to survive. The interviewees pointed out that protection of national industries was a naturally important economic policy for any country, even the U.S. itself, which claimed to be the most liberalised market in the world. They used the case of Dubai Ports World which was not able to take over U.S. ports due to the protectionist stand of the U.S.

as an example of that. Finally, two interviewees spoke about what they perceived as the social impact of the FTA on Oman. They considered the FTA as a means of U.S. imperialism through which the U.S. sought to transform Oman and other Muslim countries into Western secular types of states. The interviewees used the U.S. insistence on fully liberalising trade on alcohol and pork related meat as examples of that.

7.7. The future of the WTO

7.7.1. Pessimistic views

Only few interviewees appeared to be aware about the difficulties facing the DDA. As is indicated above, some interviewees felt that the WTO would no longer be able to govern international trade. This was simply because the WTO was created and designed to serve the interests of powerful countries. Through the WTO, new markets were open for the multinational corporations of developed countries. Trade in services and intellectual property rights were introduced. But, as issues such as liberalisation of agriculture worked against developed countries' objectives, the WTO would no longer be supported by them. Also, because their agenda of further liberalisation of trade in services and linking labour and environment standards to trade agreements could be more easily achieved via the means of FTAs, the WTO could be abandoned. Furthermore, since new influential players such as China, India, and Brazil started to challenge developed countries in WTO negotiations, the WTO could be discarded. Because of all of that, developed countries realised that the WTO would no longer be the best means to achieve their agenda. Thus, only through the FTAs could their agenda be achieved. Unless the WTO proved capable enough to serve the interests of developed countries, its future would remain at stake.

7.7.2. Optimistic views

Three interviewees, one of them was an expatriate expert on trade issues, optimistically felt that the MTS would remain the best system to govern the world trade simply because it was a tried and tested system. As it succeeded in the past despite all the difficulties, there was no reason to believe that it would not do so in the future, thus sharing the researcher's view presented in chapter two. The interviewees strongly opposed the idea that FTAs would replace the WTO in governing the world trade, because FTAs were not global in nature and they strictly applied to their signatories. FTAs are heterogeneously complicated as they differed substantially from each other in scope, contents, regulations, and commitments. FTAs might remain as tools to govern trade between their signatories, but would never replace the WTO.

The interviewees added that FTAs were based on discrimination and preferences and their spreading entails the potential of indulging the whole world in a war trade that would only end by returning to the WTO negotiating table. This trade war already started. The EU, U.S. and Japan were competing against each other to sign as many FTAs as they could. Small economies such as Oman were already affected by this war. Oman was politically driven by the U.S. wishes to individually negotiate and sign the U.S. FTA, although such a move was seen as a breach of the collective negotiations requirement by the GCC Economic Agreement. Oman had also been part of the long lasting GCC-EU negotiations. Therefore, instead of being only committed to the homogenous rules of the WTO, Oman became obliged to abide by rules of other trading systems; the U.S. FTA, the GCC, and other future free trade agreements between the GCC and other trading blocs such as the EU and Singapore.

Thus, trade issues had become very complicated for Oman. Oman agreed to allow U.S. exports zero tariffs, but it was still not clear how the issue would be dealt with if these exports came via other GCC countries. Would the U.S. exports, directed to Oman, be charged the 5 percent tariffs by that country and then repaid to the U.S. by Oman? According to one government official, the issue was still not resolved. Also, under the WTO, Oman could increase tariffs more than 5 percent in different products, but under the GCC it agreed that the overall tariffs for all products would not exceed 5 percent. All of this meant that Oman had different tariff systems; the WTO, the FTA, and the GCC; thus making trade matters quite complex for Oman. Furthermore, Oman under the WTO was not committed to the GPA, but under the FTA it did so. Until recently, EU-GCC negotiations did not entail GP but when the U.S. signed the FTA with Oman and Bahrain, GP became part of the negotiations. As a result, Oman would have to deal with two types of GP arrangements; the one with the U.S and the other with EU. Other countries would suffer from similar kind of complexities and would inevitably have to resort to the MTS to harmonise and reconcile all these differences.

One interviewee further observed that the WTO was an institution that entertained the legal personality and had its own employees, structure, and administrative system. Not only did this institution govern trade between members, it also looked into their disputes and provided them with technical assistance. Thus, this institutional aspect of the WTO made it the only global establishment suitable to govern international trade. However, FTAs lacked such advantage. FTAs were no more than treaties administered by their parties and could never be observed to be beyond that. Another interviewee thought that the phenomenon of the FTAs would face great difficulties in the future as they would become difficult to implement by their parties because of their complexities and contradictions with each other. The U.S., for instance, was committed to

many FTAs with different countries in the world. Although the U.S. claimed that these FTAs were similar to each other because they were based on the same model, the details of provisions differed from one country to another. Thus, it would become very complicated for the U.S. to implement different sets of standards with different countries.

Another interviewee, a researcher in Majlis Al-Shura, commented that the future of the multilateral trading system depended much on the future of the U.S. administration and Congress. If they became ruled and dominated by the Democrats, the revival of the WTO would be very likely. Democrats were known for their support to the MTS. A Democrat-dominated Congress would unlikely guarantee the fast track authority to the President to negotiate more FTAs. Thus, the U.S. Administration would find it inevitable but only to focus its trade policy around the MTS, and would seek all possible means to make it successful, as it did during the Uruguay Round. However, if the Republicans dominated the Congress, the future of the U.S. enthusiasm towards the WTO would be less likely, which would further jeopardise any chance to rehabilitate the multilateral negotiations.[31]

The same interviewee also assumed that the role of the WTO would be more heavily influenced by the BRICs; Brazil, Russia, India, and China, which had become more powerful in determining and influencing the world trade and economy. Their influence in multilateral trade negotiations could never be ignored. The interviewee proposed that the BRICs would be calling for a parallel treaty that would include all the problematic issues such as agriculture, oil and energy and petrochemicals, and the environment and would request the WTO to deal with the proposed treaty in a different forum from the conventional MTS. Thus, the interviewee suggested that the WTO would not have to work any longer on the single undertaking or reciprocity requirements. Neither would the new treaty have to be based on national treatment and MFN principles. This might sound revolutionary, the interviewee commented, but it was not, because the GATT and GATS themselves contained substantial exceptions from these principles such as Article 24 of the GATT and Article 5 of the GATS, which both allowed discriminatory establishment of FTAs.

7.7.3. Oman's best position in light of the difficulties facing the multilateral negotiations on the Doha Development Agenda

Two government officials surprisingly thought that the difficulties facing the WTO negotiations should not be of much concerns to Oman. Oman had entered in tough negotiations of its own

[31] Obviously, the U.S. now had the election and the Democrats do dominate the Congress.

during the accession process, as a result of which it made far too many commitments in goods and services liberalisation than many other developing countries. Also, Oman was a small economy and almost had very little effect on the world trade; unlike countries such as the U.S., EU, Japan, China, India, and Brazil. Thus, the outcome of the DDA negotiations and whether or not, they would be successful should not become a matter of concern to Oman.

However, other interviewees; economic and legal experts, government officials, academics, and some business people, regarded the above views as illogical and reflected the short-sightness of its adherents. As a member of the WTO, Oman should be concerned about the success of the negotiations because of the following reasons. Firstly, the success of the WTO would benefit all its members as their trading activities would be treated by the same regulations. As confidence in the WTO would be restored, pressures on small countries such as Oman to enter into more FTAs would be reduced. Secondly, Oman had already paid the costs of entering the WTO by making many trade liberalisation commitments. Thus, it would be about time that Oman had gained the benefits of its membership. These benefits could be better realised when negotiations on the DDA were successful and confidence in the MTS and validity of the WTO were restored.

Thirdly, it was not true that because Oman made many commitments it should not be interested in the DDA negotiations. Oman, as well as other members who joined the WTO after its establishment, should have the interests of not being asked to make more new commitments in the current negotiations. Thus, Oman could continue to line up with the so-called the group of the "recently acceded members" (RAMs); which consisted of; Albania, Armenia, China, Croatia, Ecuador, Former Yugoslav Republic of Macedonia, Georgia, Jordan, Kyrgyz Republic, Moldova, Mongolia, Oman, Panama, Saudi Arabia, Taipei Chinese and Vietnam. RAMs frequently held meetings among its members and tried to take common positions in the on-going negotiations under the DDA in order to be allowed longer periods of time to implement their commitments and not being asked to make more new commitments in the current negotiations.

It is worth-noting that this position of Oman, as one of the RAMS, was clearly recognised by the Hong Kong Ministerial Conference (December 2005), which stated in paragraph 58 of its declaration that; *[w]e recognize the special situation of recently-acceded Members who have undertaken extensive market access commitments at the time of accession. This situation will be taken into account in the negotiations.* Ironically, however, the U.S. FTA has superseded this declaration and obliged Oman to make far too many commitments than the WTO.

Fourthly, the interviewees added that the problem did not lie on the difficulties of the DDA negotiations as such, but with Oman's awareness about these negotiations and its lack of vision about how to utilise them. One expatriate expert pointed out that he advised the MOCI to closely follow proposals on sectoral negotiations, particularly on fisheries and petrochemicals because Oman entertained natural comparative advantages in these sectors. Trade liberalisation of these two sectors would benefit Oman tremendously. Oman could line up its position with many developing countries that had been affected by the heavy subsidiaries of many advanced countries such as Japan, South Korea, and the EU to their fishermen. The same applied to petrochemicals and oil and gas products, which had been subject to heavy tariffs and non-tariffs measures in the developed world under the disguise of protecting the environment. Oman could unite its position with producing countries of these products and lobby for their liberalisation.

In the same context, a government official from the MOCI proposed that Oman, as a net food importing country, should be concerned about the increase in the prices of foods which might take place if full liberalisation on agriculture was achieved. Thus, ironically Oman was benefiting from the high levels of subsidiaries provided by developed countries to their farmers, as their products were exported cheaply to Oman. However, if agriculture became fully liberalised during the current negotiations, such subsidiaries would not be applicable. This would make it costly for farmers in the developed world to produce such products. They would have to raise the prices of their exports, which would in turn negatively affect Oman, and other net-food importing countries. Therefore, the interviewee proposed that Oman could take an opposing, or at least neutral, position, in the current negotiations on agriculture. Oman should also line up with other net-food importing countries and call for special considerations to be given to them in the negotiations.

7.8. The future of the Oman-U.S. FTA and the MEFTA project

7.8.1. The future of the Oman-U.S. FTA

Three interviewees felt that because the FTA was politically driven, it would remain as a political gesture that the two countries would refer to in different occasions but without real economic value. Some other five interviewees felt that the future of the Oman-U.S. FTA would rely on the extent to which the two countries would be actually keen to enforce it. However, whether the two countries would do so, would remain to be seen. The interviewees felt that the U.S. should have much more interests to exploit the FTA with Oman, if no more additional FTAs were signed with other neighbouring countries, because Oman could be exploited as a hub for U.S. investments in the region. Oman should also promote itself to be so. However, with more FTAs in the region, U.S. investors could just choose where to establish their businesses and

Oman would not remain as a unique partner. Three interviewees proposed that Oman should establish a well-defined strategy about how to utilise the FTA and how to attract U.S. investors to its territories. Special focus should be given to know-how industry, where the U.S. could transfer its technology to Oman.

7.8.2. The future of the MEFTA project

Unfortunately, there were only four interviewees who appeared to be familiar with the concept of the MEFTA project that was proposed by the U.S. President George Bush to be completed by 2013. The interviewees felt that the project would not succeed because the MEFTA countries were economically and politically heterogeneous. Economically, they were divided into different unequal sizes that would make them difficult to harmonise. Countries in the Gulf, including Iraq and Iran, were oil and gas based economies. Jordan and Egypt depended much on the remittances of their expatriates and foreign aid. Sudan and Yemen were still poor economies depending on agriculture as main sources of income, albeit trying to divert themselves towards the oil industry. Politically, GCC countries were monarchical authoritarian systems with distinguished pro-U.S. foreign policy and the flexibility to accept Israel as a strategic friend in the region. But, the situation with Iran, Sudan, Syria, and Yemen was different. Each of them had its own type of political, allegedly democratic, system. Their relations with the U.S. and Israel were always problematic. Israel was constantly in conflict with Syria, Lebanon, and Palestine. Because of all of these differences, the MEFTA project would not succeed.

The researcher shares the above-mentioned views. The year 2013 is getting much closer and the MEFTA project does not seem to be moving forward. The U.S. has only managed to sign five FTAs; two of them were there even before George Bush's announcement of the MEFTA project in 2003; namely the FTAs with Israel and Jordan. This meant that the U.S. has so far managed to only sign three FTAs since then; with Morocco, Bahrain, and Oman. Negotiations with the UAE and Egypt have been facing many obstacles and it is unlikely that they will be concluded in the near future. Current political tensions with Iran and Syria and the continuous Israeli-Palestinian conflict would make the MEFTA project, in the way envisaged by George Bush, far from real. Bush himself, had to leave the White House, and every thing now depends on the policy of the new Barack Obama's Administration and the Democratic dominated Congress.

7.9. Evaluating Oman's administrative capacity under the WTO

Interviews revealed that Oman substantially lacked administrative and technical capacity to deal with many of the WTO issues. There was only one employee working in Oman's WTO office in Geneva. The employee was required to follow all different events in the WTO, attend different

meetings, and write regular reports to the Minster of MOCI. This had been a challenging task, particularly when considering the fact that some countries had over 30 employees representing their interests in the WTO. Even poor countries such as Pakistan had over six employees. Some interviewees added that even those who dealt with day-to-day issues of the WTO in the General Directorate of Organizations (GDO) in the Ministry of MOCI were short in number and limited in experience. They were only seven employees and only one or two of them who seemed to be experts in international trade. However, this did not mean to discredit the employees of the GDO, as one interviewee commented, but only to emphasise that these employees were made responsible to carry out immense tasks of dealing with WTO issues and analysing them that went beyond their capabilities. The employees were also responsible for preparations of the FTA negotiations and supervising its implementation in Oman. In addition, the interviews showed that Oman lacked specialists on legal issues in the field of international trade.

Therefore, eight interviewees proposed that as Oman had been seeking to be part of the international economy via the WTO and the FTA, Oman should inevitably seek to increase its investment in employing and developing human resources in the field of international trade. Specific focus should be made on studying and analysing the legal and economic impact of international agreements on Oman's trade and economy. Having enough human resources' capacity would help Oman to effectively determine how it could accommodate itself in international trade and how it could benefit from the WTO and the FTA, and minimise their costs. The interviewees added that Oman should seek to develop the negotiating skills of employees working in the field of international trade as well as other related spheres such as telecoms, GP, IPR, and dispute settlements. As negotiations in the WTO would continue and as Oman might enter into other bilateral trade agreements, developing negotiating skills of its employees had become an essential need.

7.10. Involvement of other non-Government entities in the WTO and FTA negotiations

7.10.1. Business community

7.10.1.1. Should business people be involved?

Most interviewees believed that the Oman Chamber of Commerce and Industry (OCCI) and business community should be, as a matter of principles, involved in trade agreements' discussions and negotiations, as they were the ones who would be affected mostly by such agreements. However, interviewees differed about the extent to which business people should be involved. Eight interviewees, mainly government officials and expatriate experts, believed that while business people should be consulted and their views should be considered when negotiating trade agreements, they should not be involved in the actual negotiations. This was

because trade negotiations were always governments' responsibilities. If business people were involved they would attempt to divert the negotiations towards their own interests regardless of the impact of these agreements on the economy, customers, labour, and the environment. But, governments would seek to achieve what would be best for the country and all of these elements of the society. Also, if representatives of the business community in Oman had to be involved in trade negotiations, representatives of other elements of the society; customers, workers, and environment, would equally have to be involved in such negotiations, which would further complicate the negotiations.

Four interviewees did not share the above views and argued that representatives of the business community should be directly involved in trade negotiations. This was not only because they were the ones who would be affected most by trade agreements, but also because they had more experiences and knew much more details and information about the various sectors of the economy than government bureaucrats negotiating the agreements. Also, direct involvement of business people in trade negotiations would mean a share of responsibility with the government for the consequences of these agreements. But, to what extent were business people in Oman actually involved in the WTO and FTA negotiations? Views of different interviewees on this issue are highlighted below.

7.10.1.2. Were business people actually involved?

Interviews revealed that the OCCI and business community did not participate in the actual negotiations of the WTO nor the FTA because they were government-to-government negotiations only. However, interviewees differed on the extent to which business people were made aware about these negotiations and the extent to which their views were taken into account.

Six Government bureaucrats, particularly from the MOCI, believed that the Government had done enough to make the business community aware about the WTO and the FTA negotiations and their outcomes. During the time of Oman's accession to the WTO, different conferences and presentations were provided by the MOCI in the OCCI and elsewhere in the country about Oman's commitments to the WTO and, as a result the opportunities provided to the business community. The media widely covered these events, including special interviews with the Minister of Commerce and Industry and other senior government officials. The Government also established a national committee responsible for following up the multilateral negotiations on DDA and advising the Government about them. The OCCI had a representative in that committee.

Under the FTA, representatives of the business community from the OCCI participated in the Omani-U.S. Council meeting held in Washington and they were also involved in other subsequent preparatory stages of the negotiations. Some of them were even members of the different teams that studied Bahrain-U.S. FTA. They attended different presentations and meetings headed by the Minister of Commerce and Industry. However, when the actual negotiations began they could not participate because they were only government-to-government negotiations.

Nevertheless, while the MOCI felt that the business community was given enough opportunity to participate in the discussions of the FTA, other four interviews revealed that many business people were dissatisfied when their representatives not involved in the actual negotiations of the FTA. Their involvement in the pre-negotiations stages gave them the impressions that they would participate in the actual negotiations. The MOCI did not explain to them from the beginning that their participations would only be limited to the preparatory stages. Three interviewees -- FTA negotiators -- felt that the involvement of business people in the negotiations would have made matters very difficult for the U.S.; an approach that would not be liked by the MOCI.

Four interviewees from the MOCI added that after the conclusion of the negotiations and signing the FTA, the Minister of Commerce and Industry held a meeting with business people in Oman, attended by representatives from the USTR, during which a full presentation was given to them about the outcome of the negotiations and the main contents of the FTA. However, despite all of these efforts, the business community did not show enough interests to study international trade agreements; nor did they make their views heard to the Government about the possible benefits and costs that might incurred on them as a result of the implementations of these agreements. One interviewee particularly commented that it had been over seven years since Oman joined the WTO and the business community still seemed far behind from observing the DDA negotiations and the opportunities provided to them in external markets. This reflected the immaturity of the business community in Oman.

Nevertheless, other five interviewees, including those from Oman Air and Bank Muscat, felt that business institutions were not involved in the WTO and the FTA negotiations, nor were they asked about their opinions on such agreements. They heard about them, as any one else, via the media. They felt that they should have at least been asked for their opinions about these agreements and involved in the discussions because they were the ones who would be affected by them. Interviewees from Bank Muscat emphasised that they could have acted as an advisory

institution to the Government on both the WTO and the FTA, but they were marginalised. Interestingly, some interviewees criticised the role of the Oman Chamber of Commerce and Industry (OCCI) for being a government oriented institution and not playing enough role in reflecting the views and the interests of the business community in Oman. They argued that the modest involvement of the OCCI in the FTA and the WTO discussions did not reflect a purely objective representation of the business community. But, rather it was a matter of involving another government institution in those discussions. The OCCI was established and run by the Government. The Government paid the salaries of the Chamber's employees and had the final decision on appointing the Head of the OCCI and its Board Members.

7.10.2. Majlis Al-Shura (MAS) and Majlis Al-Dawla (MAD)[32]

7.10.2.1. Should the MAS and the MAD be involved in debating trade agreements?

As was the case with the business community, most interviewees supported, in principle, the involvement of the MAS and the MAD in presenting their views about any trade agreement that the Government thought of negotiating. The views of the two Majlises would help the Government obtain second opinions about issues under discussions. The MAS, in particular, represented the people of Oman and its involvement would reflect the development of the democratisation process in the country. If the role of the MAS was neglected, Oman would run the risk of being seen as not carrying out the democratisation process effectively. One interviewee pointed to the role of the U.S. Congress which had the authority to approve each FTA that the Administration negotiated and signed. Without the approval of the Congress, the Administration would not be able to implement any FTA. Thus, the interviewee proposed that Oman should get the two chambers of the Council of Oman, MAS and MAD, involved in debating the FTA, as that would reflect the democratisation process of the country and make the role of the two Majlises more meaningful. Another interviewee added that if the Government of Oman had felt under pressures from the U.S. to negotiate and sign the FTA, it could have used the MAS and the MAD as tools to minimise such pressures. The views of the MAS and the MAD would be seen as reflections of the Omani people's views. The Government could then use these views either to get around the FTA or to ask the U.S. to modify it to meet the views of the MAS and the MAD. But, to what extent were the MAS and the MAD really involved in discussing Oman's membership to the WTO and the FTA? Interviewees' opinions on this issue are elaborated below.

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[32] Both the MAS and the MAD constitute the Council of Oman (Majlis of Oman), whose task is to help the Government to draw up the general policies of the country. The MAS is elected by universal suffrage but has no legislative powers. Its role is purely consultative and it is not permitted to discuss the foreign policy and defence matters. The last election to the Majlis members was held in October 2007. The MAD is appointed by Royal Decree from Omani nationals of not less than 40 years of age with good social standing and reputation. Its role is also consultative (Al-Shura Majlis, 2009, Ministry of Information, 2009).

7.10.2.2. Were the MAS and the MAD actually involved?

Interviews explored that neither the MAS nor the MAD were given the opportunity to express their views about the FTA or the WTO membership before making official commitments. The MAS criticised the MOCI for not involving it in any kind of discussions on the WTO or the FTA. Only after continuous demands, the MOCI took the effort to brief Al-Shura members and that only came after the conclusions of the negotiations and signing up the FTA. Interviewees provided different justifications for this marginalisation of the two Majlises. But, none of these justifications appeared to be convincing enough for the interviewees from the two Majlises.

Ten interviewees attributed the non-involvement of the MAS and the MAD in the discussions of international trade agreements to the lack of confidence of the MOCI in the capability of the Majlises' members to provide in-depth analysis about trade agreements. The latter were complex in nature and consisted of many detailed chapters and provisions that their analysis required special experts in the fields of international trade. None of the two Majlises had such capability.

However, five interviewees from the MAS and MAD did not agree with such justifications. They commented that members of the Majlises need not have to be experienced in trade issues. They could seek professional views to advise them about any trade agreement under discussions. These views could be of a great help to the Government. One interviewee particularly emphasised that the MAS was an institution with research capacity and it could make hearings and listen to different views from business, professional and academic spheres in Oman. The Government could benefit from MAS' findings. The interviewee added that the MAS had already proven very successful in producing valuable studies in different economic and social fields, such as the study on the impact of the Oman Cement Company (OCC) on the health of the tenants living in nearby villages of the factory of the OCC in Bawshar (Muscat). Also, the Economic Committee of the MAS produced a study on the causes of the inflation on consumptive commodities' prices in Oman. The Committee also annually studied and reviewed the proposed budget of the Government prepared by the Ministry of Finance, and had proven very capable to provide important recommendations to the Sultan. Therefore, for these interviewees, the argument that MAS lacked the capability of providing valuable opinions about trade agreements was a weak one.

Another justification for the non-involvement of the MAS and the MAD in discussing trade agreements before their conclusions was because of the MOCI concerns that such discussions could take excessively long time and might make things more complicated. This might result in prolonging the negotiations for unnecessary long period of time. However, the interviewees from

the MAS did not agree with this justification. The MOCI could simply specify a date on which the MAS should present its views about the agreements. The MAS would be obliged to meet the allocated deadline, as it had already proven successful to do so in reviewing the annual budget of the state. Another interviewee questioned why the time should be regarded as a problem. Given the importance of the U.S. FTA and WTO membership, great deal of time, he argued, should be allowed for discussing and debating these agreements.

Other interviewees felt that the role of the MAS was merely consultative. Government institutions were not obliged by law to take the MAS and MAD's views. This could be another reason for their marginalisation from discussing trade agreements. But, for the four interviewees from the MAS, this was not utterly true. One interviewee referred to Article 28 of the Royal Decree No. 86/1997 according to which the MAS had the duty of assisting the Government on any issue that concerned the Omani society. This meant, according to the interviewee's interpretations, that the MAS should be allowed to effectively practise this right and debate important topics such as the FTA and Oman's membership to the WTO as they were of concerns to the Omani society. Then, it would be up to the relevant Government institutions to take up the MAS' recommendations or not.

7.10.3. The role of the academia

Interviews with five academics revealed that the role of the academics in debating Oman's negotiations with the WTO and the U.S.FTA was also absent. This was firstly due to the lack of belief by Government institutions in the role of academics and their capabilities to provide in-depth and critical views about many different issues. But, for the academics, this was a completely wrong impression as they believed that they had enough capabilities to advise Government institutions on issues concerning the society and the economy. Even if they lacked the required specialisations, they could seek assistance from more specialised academic institutions. Secondly, each ministry had its own agenda and ways of pursuing things and if other independent institutions such as the Sultan Qaboos University (SQU) became involved, their views might not go a long with the ministry's policy or vision. Thus, ministries would attempt to avoid the involvement of these institutions. Interestingly, according to one academic from the SQU, a representative from the USTR's office visited the University enquiring about the role of the academia in the FTA negotiations. The USTR representative was surprised when he knew that the SQU had no role whatsoever in the negotiations. This absenteeism of the role of the academia in Oman was the opposite of what was practised in the U.S. where academic people made testimony to the Congress on different issues, including FTAs.

7.11. WTO plus issues

Around eight interviewees: business people, Al-Shura members, and even some FTA negotiators, were not aware about the fact that the FTA was a WTO plus agreement. Two of them even appeared to be surprised about this fact as they thought that the WTO as an organisation governing the trade of the whole world should naturally contain more rules and wider obligations than the FTA which was only between two countries. This demonstrates the lack of awareness among these groups of people about trade issues. However, many of those who were aware of this fact felt that the WTO was more suitable for a small country such as Oman than the FTA, which supports the main argument of this thesis. Some of them believed that it would have been better for Oman if it had only stuck with its commitments to the WTO without being involved in the U.S. FTA. This was because Oman had already made far too many commitments under the WTO and need not to go beyond that. But, the FTA went further than that and obliged Oman to abide by so many complex rules and commitments and even added new issues such as labour, environment, and government procurement that Oman was not obliged to abide by under the WTO.

Interestingly, however, the interviewees differed about the extent to which some of the WTO plus issues could work for the benefit of Oman. Six of them thought that although Oman's commitments to these issues added more burden that other developing countries under the WTO were exempted from, they would help improve labour and environmental standards, and would augment transparency in government procurement and enhance Government's efforts to fight corruptions. Thus, the business environment would be improved. Nevertheless, the other five interviewees felt that Oman did not need to have an FTA to strengthen the standards of these issues. Workers' conditions, environmental measures, and transparency in GP, were stronger in Oman than many other developing countries. Oman could further enforce these standards without having to get involved in any FTA.

Two interviewees, a high senior Government official and an expatriate expert, refused the idea of subjecting labour and environmental standards to trade agreements. They felt that they were non-trade issues and should be dealt with separately, thus sharing similar ideas of Jagdish Bhagwati (2001) (see Appendix 3.2). Another interviewee interestingly argued that GP should not be made subject to any trade agreement as that would be an act of anti-free trade policy. This was because governments' ability to act as free customers would be limited. Under free trade ideology, customers should entertain all rights to freely choose from whom to buy their products. Any customer had his own reasons for selecting particular products or services and governments, as customers, were of no difference. But, under the FTA this freedom was restricted. Other

interviewees, as is already indicated, strongly opposed subjecting GP to the FTA, because GP was a tool for all governments, particularly developing countries, to promote its national industries.[33]

7.12. Conclusion

The outcomes of the semi-structured interviews generally support the earlier findings of the thesis that Oman's trade is better served by the WTO arrangements than the FTA and that Oman faces better policy choices under the multilateral WTO approach than the bilateral FTA approach. Oman's accession to the WTO came about as a result of a strong conviction by the Government about the necessity of having to take up such a step. Oman's negotiating experience under the WTO proved to be very long and tough, but this only reflected the negotiating team's insistence on not giving up easily. This does not mean that Oman's negotiations under the WTO did not have any shortfalls. On the contrary, there were many problems some of which related to the lack of negotiating skills and others to the difficulties of having to negotiate with different members at the same time. However, when comparing the situation with the FTA, it can be determined that Oman's negotiations were better organised and prepared for the WTO accessions than for the FTA. Under the WTO, the Omani negotiating team had better visions about the extent to which they should agree to make commitments on certain issues, although in the end they made so many commitments particularly in the field of services. Before the negotiations, Oman managed to conduct some preparatory studies about the WTO agreements and about the kind of commitments that could be made or that could not be made. Negotiators had the time to go back to their ministries and discuss the possible consequences of some commitments before making them. Also, they benefited from the negotiating experiences of other members.

However, under the FTA, the preparatory steps for the negotiations were taken very quickly. Every thing appeared to be driven politically, as the interviews demonstrated. The ultimate aim of the MOCI appeared to achieve a timing record for concluding and signing the FTA irrespective of the commitments made. Apart from Bahrain's experience, nothing much was done to prepare for the FTA negotiations. Two rounds, lasted only for seven months, were enough to conclude the negotiations on perhaps the most comprehensive trade agreement in Oman's history that even goes beyond the WTO agreements. Interviews revealed that not only did the Omani negotiating teams have little time to study their relevant chapters of the FTA before the start of actual negotiations; they were also asked not to complicate things for the U.S. and attempt to accelerate the negotiations. Even the few obstacles that some Omani teams might

[33] For similar discussions, see the researcher's analysis on government procurement in chapter six.

have created during the negotiations, the U.S. managed to overcome them directly through the MOCI. When all of these factors are added to the lack of the negotiating skills, experiences, and legal knowledge amongst Omani negotiators, as the interviews revealed, it can then be realised how the position of the Omani negotiating teams was weakened and how the FTA was politically driven in the façade of trade.

Furthermore, Oman should not put much hope on the so-called 'special preferences' provided by the U.S. FTA to overcome economic problems. The U.S. had signed many of these FTAs with different countries in the world, with even better terms and provisions. The U.S. might negotiate more of these FTAs with other countries in the Middle East and elsewhere in the world. Thus, Oman should realise that it would not be the only special trading partner with the U.S. There were many others and there could be more to come in the future. As one interviewee cynically put it; *these U.S. FTAs acted like a prostitute who would claim to be the lover of every one while she was the lover of no one*. Hence, Omani exports would have to be of markedly high quality and distinctly competitive if they wanted to survive in the U.S. market that was open to many favourable competitors; an objective that would be very difficult to achieve at least in the short and medium future.

On the other hand, Oman's market is relatively small and competition is less. In sectors such as telecom, financial services, and constructions, there are Omani national industries providing these services. With the implementation of the FTA, these industries could be easily driven out of business by influential U.S. competitors due to big differences in capital, technological, and human resources capabilities. The hopes that the FTA would help improve the economy by attracting U.S. investors, increasing competition, overcoming the unemployment, and achieving diversification can be described as too ambitious. The fear is that the FTA would only help U.S. products and businesses dominate and monopolise the Omani market. This is because U.S.' investors, due to the virtue of the FTA, would find the small Omani market opened up completely to them with very special preferential terms that do not apply to other foreign investors. Hence, U.S. products and investors would strictly compete with national products and firms on equal ground. The FTA would also enable U.S. firms to overcome other foreign competitors in the market, which do not enjoy preferential treatment as those of the U.S. Thus, the Omani market would be faced by the ultimate reality of being shifted from the monopoly of some national industries, to the domination of the U.S. investors; while other foreign firms would not be able to balance the situation because they would be discriminated against by the Oman-U.S. FTA. The only solution to get out of this dilemma created by the FTA would be for

Oman to provide other foreign investors with similar preferential treatment that was provided to the U.S.; thus entering from one discriminatory agreement into another. Therefore, although the FTA and the WTO both call for free trade and open market, the FTA is based on discrimination against other trading partners, and Oman will have to live up with that, while the WTO is based on equal treatment between all members.

Furthermore, the marginalisation of the role of important institutions in the Omani society; business people, Majlis Al-Shura, Majlis Al-Dwala, and the academia from discussing and presenting their views on trade agreements, harmed no one but Oman's interests. All these entities could have been capable and ready to provide secondary opinions on Oman's accessions to the WTO and the FTA, but they were never asked to do so. Whatever the real reasons for this absenteeism, the fact is that the MOCI lost the opportunity of getting additional opinions on these issues. Most interviewees supported the involvement of these entities in trade discussions. But, why this was not done so, received different interpretations and justifications by the interviewees.

In addition, the task of signing the FTA was ironically achieved within a world time record, but Oman had to enter into a new complicated and unexpected dilemma concerning the reform process of its domestic laws; a process that has proven difficult and time-consuming to carry out. Despite all the efforts and assurances from Oman, the U.S. insisted that it would not agree to start the implementation of the FTA unless it felt satisfied about all the reforms made by Oman; a complicated strenuous process that only ended on January 1, 2009, after three years of signing the FTA.

Whatever the political reasons that drove Oman to hastily negotiate and sign the U.S.FTA were, Oman must face the reality that it has to equip itself to abide by the complex rules of the FTA and its WTO plus commitments. The opportunity of collaborating with other countries available under the WTO would not be available for Oman in the FTA. Oman, alone would have to deal with the U.S., not as a developing country as is the case under the WTO, but as an equal partner. Ironically, while other WTO members are still refusing to include GP, labour, and environment issues into the ambit of the WTO, Oman must abide by them under the FTA. Even more ironically, while Oman is now seeking to collaborate with the so-called "recently acceded members" (RAMs), so that no more new commitments would be incurred on it in the on-going DDA negotiations, Oman, under the FTA, has made far more additional commitments in different fields; market access, service, telecom, labour, environment, and GP. This in itself

appears to be a contradictory policy. Because of all it seems that the WTO better accommodates Oman's interests than the FTA.

Having analysed the data collected from the semi-structured interviews through the content/narrative analytical approach, the chapter moves now to reproduce the very comprehensive and detailed findings of these interviews in a systematically codified categories.

7.13. Codification analysis

Table 7.1: Codified analysis of the semi-structured interviews on Oman's late accession to the WTO

Category	**Reasons for the delay of acceding to the WTO in November 2000**	
Focused coding		
	No.	
Protectionist and monopolistic trade policy	5	- Protective policies, complex bureaucracy, and the monopoly of a small number of business families in the economy were the main reasons for Oman's late accession to the WTO. - The late entry to the WTO was costly as Oman had to make far more commitments than the founder members. - Oman was given a shorter period of time to liberalise many of its services than other members.
Joining the WTO was a natural consequence to different developments.	6	- **Locally**, before 1990s Oman did not need to join the GATT as it did not face major economic or social problems. - But, in the 1990s, high unemployment and the uncertainty of oil productions and prices forced policy makers to free trade and to apply for WTO membership in April 1996, as part of Oman 2020. - The application and negotiating processes in the WTO were the main reasons for Oman's late accession to the WTO. - **Regionally,** GCC members individually sought GATT/WTO membership without prior consultation with each other and Oman followed suit. - **Internationally**, during the Cold War Oman pursued a non-aligned stand and did not want to project itself as an economic liberalist adherent. - With the collapse of the Soviet Union, Oman became more able to firmly commit itself to the principles of open economy and free trade. - During the long Uruguay negotiations, Oman preferred to closely follow up the negotiations. - When the WTO was established in 1995, Oman became an "observer" and officially applied to be a member the following year (1996).
Theme	Different justifications were given for Oman's late accession to the WTO, as a result of which Oman had to make far more commitments than other founder members.	

Source: Compiled by the author (2009).

Table 7.2: Codified analysis of the semi-structured interviews on the impact of the WTO on Oman's trade

Category		**Costs and benefits of WTO membership for Oman's trade**
Focused coding		
	No	
Positive views	7	- WTO enables Oman to integrate into global trade and locks-in its adherence to free trade principle. - The impact of the MTS depends on how Oman defines its own interests and allocates the best means to achieve them. - WTO enables Oman to export its products to the markets of over 150 countries and establish businesses in them. - WTO guarantees Oman's exports equal treatment with other products in external markets. - In cases of disagreements, Oman can resort to the multilateral dispute settlement process.
Negative views: the pessimists	4	- WTO was created to serve the interests of developed countries. - Oman's commitments to open 12 services sectors were due to the pressures of developed countries, not the belief in free trade. - WTO's regulations erode Oman's sovereignty. - Oman can no longer protect its infant national industries. - WTO membership has made Oman more dependent on imports. - Oman should focus on how domestic products and businesses could survive in the local market.
Balanced views: the risk adverse	6	- Oman should adopt a clear strategy about how to exploit the opportunities and overcome the challenges under the WTO. - Oman can adopt strong promotional programmes to attract foreign investment in sectors where it needs and feels ready to liberalise such as tourism, education, and health sectors. - In sectors where immediate liberalisation could harm the Government's interests as is the case in telecom and postal services, Oman should open these services gradually and cautiously. - The WTO wide membership helps Oman implement this strategy as the focus on Oman and the follow-up procedures are much more relaxed than the FTA.
Theme	Oman's benefits from the WTO depend much on how it utilises its membership to serve its trade interests, minimise its challenges, and exploit the opportunities available.	

Source: Compiled by the author (2009).

Table 7.3: Codified analysis of the semi-structured interviews on Oman's incentives to sign the FTA

Category		**Reasons for Oman's enthusiasm to negotiate and sign the U.S. FTA despite being already committed to multilateral trade liberalisation**	
Focused coding			
		No.	
Political incentives	Political support	Most	- Oman signed the FTA for political reasons.
		4	- Oman's enthusiasm to sign the FTA reflected its support to the U.S. foreign policy. - The FTA would enhance Oman's ties with the U.S.
		1	- Given the tensions between the U.S. and Iran and the possibility of war, Oman should pursue a very carefully balanced policy towards both the U.S. and Iran.
	Historical ties	4	- The historical ties between Oman and the U.S. explained Oman's enthusiasm to sign the FTA.
	U.S. approval	4	- GCC countries competed to individually sign FTAs with the U.S. because of strategic concerns and the desire to have military protections. - U.S. negotiated FTAs with the GCC countries individually to weaken their collective strength.
Economic incentives	No economic incentives	4	- Oman signed the FTA for purely political reasons. - No economic incentives for Oman behind the FTA.
	Possible economic incentives	6	- The FTA fits into Oman's trade strategy and its efforts to attract foreign investment and overcome unemployment. - The FTA would enable Oman to preferentially benefit from trading with 19 MEFTA members. - FTAs would replace the WTO in governing the world trade. Thus, it would be better for Oman to sign these FTAs as early as possible, so that it will not have to make far more commitments than other countries.
Theme	Political factors better justify Oman's enthusiasm to negotiate and sign the U.S. FTA than economic factors.		

Source: Compiled by the author (2009).

Table 7.4: Codified analysis of the semi-structured interviews on Oman's preparations for the WTO and FTA negotiations

Category		**Under which trading approach was Oman better prepared for the negotiations?**
Focused coding		
	No.	
Preparations for negotiations to accede the WTO	4	- Oman prepared well for the negotiations. - Before the negotiations, Oman followed the Uruguay negotiations and then became an "observer" to the WTO for one year (April 1995-April 1996). - Oman conducted feasibility studies on the possible impact of the WTO. - Oman consulted some developing countries and experts. - Oman had a clear idea about the liberalisation commitments it should make or it should not.
Preparations for the FTA negotiations	6	- Oman's preparations for the negotiations were very limited. - No feasibility study was conducted on the impact of the FTA on Oman's trade. - Negotiators did not have enough idea about the details of the chapters they were going to negotiate. - Negotiators were given a very short period of time to prepare for the negotiations. - Not all negotiators managed to study the Bahrain –U.S. FTA. - A special team from different Government institutions visited Bahrain to learn from its FTA experience. The visit was beneficial.
Theme		Oman was better prepared for the multilateral negotiations than for the FTA negotiations.

Source: Compiled by the author (2009).

Table 7.5: Codified analysis of the semi-structured interviews on Oman's negotiating experiences under the WTO and FTA

Category		**Under which trading approach did Oman face more difficult negotiations?**
Focused coding		
	No	
Negotiating experiences under the multilateral WTO approach	Many	- Negotiations were difficult and long. - Oman faced a lot of pressures from the U.S. and EU to oblige it to make so many commitments.
	4	- The working party had greater negotiating experiences and skills than Oman. - Each member pressurised Oman to make commitments on certain issues or sectors. Once agreed, the commitment would apply to all other WTO members, as per NT and MFN principles. - The U.S. was the most difficult negotiator and had the last word.
	2	- The U.S. asked Kyrgyz Republic to join the negotiations to oblige Oman to make more commitments, although there was no trade between Oman and Kyrgyz Republic.
	4	- The Omani team did not have a clear negotiating strategy. Internal discussions within the team easily leaked out. - Oman had to make many commitments particularly in services, but managed to achieve good results in Omanisation, foreign equity, and high tariffs for some important and sensitive products. - Oman managed to avoid being a party to the plurilateral GPA.
Negotiating experience under the bilateral FTA approach	Many	- Oman's negotiations were much shorter (only 7 months) than under the WTO (around three years). - Omani negotiators agreed to the FTA contents and to the U.S. demands in a much more contradictory way than was the case under the WTO.
	3	- There was a rush by the MOCI to conclude the negotiations within the shortest time possible despite the complex nature of the FTA. - There was no clear vision about Oman's objectives behind the FTA.
	3	- The decision of signing the FTA had already been taken before the start of the negotiations.
	5	- Omani negotiators were tough but had to agree with many U.S.' demands because of the disadvantageous negotiating environment they were placed at.
	2	- Dividing negotiators into separate teams did not help the negotiations as each team felt that it was only responsible for the negotiations of its chapter irrespective of other chapters, even though some chapters were very inter-linked and commitments in one chapter would affect other chapters.
	3	- U.S. negotiators were well informed and knowledgeable about Oman's trade and economy but Omani teams lacked such knowledge about the U.S.
	4	- Due to the lack of preparations and unclear objectives, Omani teams were no more than listeners to U.S. demands. - It was very difficult for the Omani teams to analyse and understand the FTA within a short period of time. - Legal experts refused to participate in the negotiations because

		the FTA was not translated into Arabic, except one legal expert who had an English legal background. - All the Omani teams relied on one legal expert, whereas each U.S. team had its own legal advisor. - Some Omani negotiators were busy on other things in their ministries besides the FTA negotiations. - They did not have the chance to read the relevant chapters. - Some negotiators only attended the initial stages of the negotiations but disappeared afterwards.
Theme	WTO negotiations were much more difficult and long than the FTA. But, the Omani negotiators under the WTO had a clearer agenda and objectives than under the FTA. Oman made far more commitments under the FTA than the WTO. Under both trading approaches Omani negotiators lacked the skills and experience.	

Source: Compiled by the author (2009).

Table 7.6: Codified analysis of the semi-structured interviews on the GCC views on the FTA

Category	**Oman-U.S FTA vis-a- vis GCC countries**	
Focused coding		
	No.	
GCC reactions to Oman's individual FTA negotiations.	Some	- Some negotiators were not aware of the collective requirements of the Economic Agreement of the GCC.
	2	- Oman was not the first to individually negotiate the U.S. FTA. - Bahrain had done it before and Oman was negotiating its FTA in parallel with the UAE-U.S. FTA negotiations.
	1	- It seems as if there was a conventional understanding amongst the GCC members to violate the collective negotiating requirements of the Economic Agreement in regard to U.S. FTAs.
	1	- The U.S. negotiated FTAs with GCC members individually to weaken their collective strength. - The U.S. learnt from the GCC-EU FTA negotiations which took a very long time and has reached deadlock.
	1	- Saudi Arabia was unhappy about Oman's individual negotiations.
	1	- Saudi Arabia was itself secretly negotiating an FTA with the U.S.
The UAE-U.S. FTA vis-à-vis the Oman-U.S. FTA	1	- The UAE-U.S. FTA negotiations were more difficult than the Oman-U.S. FTA negotiations, particularly on labour issues. - The business community in the UAE was much more involved in discussing the potential impact of the FTA than in Oman. It was felt that the FTA would not add much value to the UAE economy.
	1	- The UAE asked Oman to adopt a common negotiating position in their FTAs with the U.S. - But, Oman did not support the idea as its negotiations with the U.S. were almost finalised.
	4	- The UAE was better prepared for the FTA negotiations than Oman. - The UAE learnt from the Australian experience about the impact of the U.S. FTA on its economy.
	1	- The U.S. negotiators described the UAE negotiators as complex and unable to understand the substance of the FTA as the Omanis.
	2	- It was good that Oman did not complicate its FTA negotiations because the later it signed the FTA the more complex it would turn to be. The U.S. would not give the UAE better deals than Oman.
Bahrain's experience	Many	- A delegation from different Government institutions visited Bahrain to learn from its FTA experience. - The visit was considered important and useful.
Theme	GCC countries have reached consensus not to apply the collective negotiations requirement to U.S. FTAs. Oman did not want to tie up its FTA negotiations with the UAE and learnt from Bahrain's experience.	

Source: Compiled by the author (2009).

Table 7.7: Codified analysis of the semi-structured interviews on issues related to the Oman-U.S. FTA after the conclusions of the negotiations.

Category		**Issues related to post-negotiations of the Oman-U.S. FTA**
Focused coding		
	No.	
The language of the FTA	Many	- The FTA was signed in English only and until now it is not translated into Arabic, nor is it published in any Omani websites.
	1	- The FTA is put into force while the business community know little about its substance, which contradicts the transparency requirement of chapter 18 of the FTA.
	1	- Bahrain published an Arabic version of its FTA in special websites.
	1	- Last paragraph of chapter 22 states that the FTA is signed in English and Arabic but that is not true and misleading.
Reforming domestic laws	Many	- The U.S. conditioned that Oman should reform all its relevant domestic laws before the implementation of the FTA; a process that proved very strenuous and long.
	2	- The U.S. sought to adapt Omani laws to meet its interests. - The MOCI pressurised the Ministry of Legal Affairs to make the required reforms of domestic laws as quickly as possible.
EU-GCC FTA negotiations	2	- Oman and Bahrain-U.S. FTAs have complicated the long EU-GCC FTA negotiations - The EU demands no less treatment in all aspects than what was accorded to the U.S. in its FTAs with Bahrain and Oman.
	2	- The GCC fought hard to convince the EU not to subject sensitive products such as alcohol and pork meats to their FTA. - But, as Oman and Bahrain agreed for the U.S. products of these kinds to enter their markets freely, the EU required no less treatment. But Saudi Arabia refused to do so.
Theme	The FTA is not yet translated into Arabic and much of its details are not known to business people. The reform process of domestic laws was very strenuous. Oman and Bahrain-U.S. FTAs have complicated the already long EU-GCC FTA negotiations.	

Source: Compiled by the author (2009).

Table 7.8: Codified analysis of the semi-structured interviews on the potential effect of the FTA on Oman's trade

Category		**Impact of the FTA on Oman's trade**
Focused coding		
	No.	
Positive views	5	- The FTA could benefit Oman and the U.S. provided it is exploited properly. - The FTA provides the legal ground to increase trade between Oman and the U.S., but it would be up to them to put it into force effectively. - Oman could export its products freely to the U.S. market and vice versa. - U.S. businesses would be more attracted to invest in Oman which would help achieve the diversification and Omanisation objectives. - Omani businesses would learn how to survive in the real business world.
	2	- Oman should establish a strategic plan to maximise the benefit of the FTA. - The plan should focus on sectors where U.S. investments could add real value and help the advancement of sectors such as IT and petrochemicals.
	6	- The FTA improves Oman's regulations on labour, environment, and GP.
Negative views	4	- The FTA will not benefit Oman's trade because of the substantial differences in the level of developments between the two countries. - Oman's modest manufacturing capabilities do not enable it to compete effectively in the U.S. market. - Oman will loose substantial revenues generated from the high tariffs on many products including alcohol and cigarettes. - The FTA will work for the benefit of the U.S. as its products will enjoy free access to the Omani market that imports from other countries will not enjoy.
	5	- Oman does not need an FTA with the U.S. to strengthen the standards of labour and environment. - Workers' conditions, environmental measures, and transparency in GP are stronger in Oman than in many other countries.
	2	- Labour and environmental standards are not trade issues and should not be made part of any trade agreement. They should be dealt with separately.
	1	- GP should not be made subject to any trade agreement because it restricts governments' abilities to act as customers.
	4	- The FTA threatens national industries which heavily depend on GP. They have to compete on equal footing against U.S. national bidders.
	2	- The U.S. insistence on the full liberalisation of alcohol and pork is an example of U.S. imperialistic objectives to transform Muslim nations into Western secular states.
Theme	The impact of the FTA depends on the extent to which Omani national products and businesses will be able to survive against their U.S. counterparts. Labour and environment are not trade issues. Oman's ability to use its GP as a tool for promoting national industries will be very restricted under the FTA.	

Source: Compiled by the author (2009).

Table 7.9: Codified analysis of the semi-structured interviews on the future of the WTO and Oman's membership

Category	**Oman's WTO membership in light of the difficulties facing the Doha Round**	
Focus coding		
	No	
Pessimistic views	Some	- As WTO can no longer serve developed countries with increasing challenges from developing countries, FTAs are a better alternative.
Optimistic views	3	- The MTS will remain the best system to govern the world trade because it is a well-structured and tested system. - FTAs will not replace the WTO as they only apply to their signatories and differed from each other. - FTAs are based on discriminations and their spreading could indulge the whole world in a war trade.
	1	- FTAs would be difficult to implement due to their complexities and contradictions.
	1	- There is a hope that the MTS will revive under the U.S. Democratic Administration and Congress. - The WTO will be more influenced by the BRICs: Brazil, Russia, India, and China as they have become more influential in world trade.
Oman's best position in light of the difficulties facing the Doha negotiations	2	- Oman should not be concerned about the success or failure of Doha negotiations because Oman has very little effect on world trade.
	Many	- Success of DDA means a vote of confidence on the WTO, which will reduce pressures on small economies such as Oman to sign FTAs. - Oman, as any other members, will continue to be subjects to the same trade regulations on non-discriminatory basis.
	1	- Oman should follow proposals on sectoral negotiations particularly on fisheries and petrochemicals in which Oman has some advantages. - Liberalisation of these two sectors will benefit Oman.
	1	- Oman should coordinate with food importing countries to raise their concerns about the likely increase in food prices if full liberalisation of agriculture was achieved.
Oman's administrative capacity under the WTO	Many	- Oman lacked administrative capacity to deal with WTO issues. - There is only one employee working in Oman's WTO office in Geneva who is required to follow different events, attend meetings, and write regular reports to the MOCI. - Oman lacked specialists on legal issues in international trade laws.
	8	- Oman should make substantial investment in human resources in international trade and seek to develop the negotiating skills of employees working on trade issues.
Theme	There is clear optimism about the revival of the WTO to continue governing world trade. Oman should have clear interests in the current multilateral negotiations and should seek to enhance its administrative and technical capacity in the field of international trade.	

Source: Compiled by the author (2009).

Table 7.10: Codified analysis of the semi-structured interviews on the role of the business community in Oman in trade agreements.

Category	**Involvement of the business community (BC) in WTO and FTA negotiations**	
Focused coding		
	No.	
Should the BC be involved in trade negotiations?	Most	- As a matter of principle, the BC should be involved in trade agreements' discussions and negotiations because they are the ones affected most by trade agreements.
To what extent should the BC be involved?	8	- BC should be consulted but not involved in the actual negotiations, which is only the task of the Government. - Business people will divert the negotiations to serve their interests regardless of the impact of the agreements on the economy, customers, labour, and the environment. - Governments, on the other hand, consider the interests of all these elements of society.
	4	- BC should be consulted and involved in actual negotiations as they are the ones affected most by trade agreement and know more details about different sectors of the economy than Government bureaucrats. - Direct involvement of BC in trade negotiations means a share of responsibility with the Government.
To what extent was the BC in Oman involved or consulted in the WTO and FTA negotiations? **1) Government perspective**	Most	- BC did not participate in the actual negotiations of the WTO nor the FTA.
	6	- The Government made enough efforts to make the business community aware about the WTO and FTA negotiations. - There were many conferences and much media coverage of Oman's commitments under the WTO. - A national committee for following up the Doha negotiations was established and the Oman Chamber of Commerce and Industry (OCCI) is represented in the committee. - The OCCI participated in the preliminary meetings and discussions of the FTA including the Omani-U.S. Council meeting in Washington. - But, the OCCI could not participate in the actual FTA negotiations because they were governments' negotiations.
	4	- After signing the FTA, the MOCI informed the BC in a conference held in the OCCI about the contents of the FTA.
	5	- The BC has not shown enough interests to evaluate the impact of trade agreements on their businesses.
2) Business perspective	4	- Many business people were unhappy about their exclusion from the FTA negotiations. - Their involvement in the pre-negotiations gave them the impression that they would participate in the actual negotiations. - The MOCI did not explain to them that their participations would only be limited to the initial stages.
	3	- If business people were involved in the actual FTA negotiations, they would have made matters very difficult for the U.S.; an approach that might not have been favoured by the Government.
	5	- Influential business institutions such as Oman Air and Bank Muscat were not involved at all in the WTO and FTA negotiations, nor were they asked about their opinions about

		such agreements in any kind of discussions. - Bank Muscat has consultancy capabilities to advise the Government on the WTO and the FTA, particularly in services.
	Some	- The OCCI is Government oriented and does not reflect the views and interests of the business community in Oman. - The modest involvement of the OCCI in the FTA or the WTO discussions did not reflect a purely objective presentation of the business community in Oman. - The OCCI is established and administered by the Government.
Theme	Although it is commonly agreed that the BC in Oman should be involved in discussing and presenting their views about trade agreements before signing them, the role of the BC was very limited. The OCCI is not seen as a real representative of the BC.	

Source: Compiled by the author (2009).

Table 7.11: Codified analysis of semi-structured interviews on the role of the Council of Oman in trade agreements

Category	**Involvement of Majlis Al-Shura (Consultative Council) and Majlis Al-Dawla (State Council) in debating trade agreements before signing them**	
Focus coding		
	No	
Should the MAS and MAD be involved in debating trade agreements before signing them?	Most	- In principle, the MAS and MAD should debate any trade agreement that the Government intends to sign. - The views of the MAS and MAD will help the Government obtain second opinions. This will reflect Oman's adherence to democracy.
	1	- U.S. Congress must approve each FTA negotiated and signed by the Executive branch. - Similarly, the MAS and MAD should be involved in debating and voting for, or against, trade agreements.
	1	- The MAS and MAD could release negotiating pressures from the Government, particularly where the Government is not inclined to approve certain provisions for social or religious reasons.
To what extent were the MAS and the MAD actually involved in debating the FTA and WTO membership?	Many	- Neither was the MAS nor the MAD was involved in debating the FTA or WTO membership before making official commitments. - The MAS criticised the MOCI for not involving it in any discussion related to the WTO or the FTA. - Only after continuous demands, the MOCI briefed the MAS about the WTO and the FTA, which came after the conclusions of the negotiations.
	10	- Lack of involvement by the MAS and the MAD was due to: - a) the lack of confidence of the MOCI in their capabilities to provide sufficient views on complex trade issues. - b) MAS and MAD discussions could take an excessively long time. - c) the role of the MAS is merely consultative. Government institutions do not have to consult it.
	6	- The above views are not accurate. - Members of the MAS and MAD need not be specialists in trade issues. - They could seek professional views from other independent institutions.
	1	- The MAS has research capacity. It can organise hearings and listen to different views from the business, professional, and academic spheres in Oman. - The Government could benefit from the MAS studies on trade issues as it has already done in other economic and social fields such as reviewing the Annual Budget of the State.
	4	- The MAS does not have to take excessively long time to debate trade issues. - The MOCI could specify a date on which the MAS should present its views. - If it exceeds the time limitations, the MOCI does not have to await their views.
	1	- The MAS should have the legal rights to debate trade agreements and then it is up to the Government to take up its recommendations or not.
Theme	Although there is a general consensus that the MAS and MAD should be involved in debating and discussing trade agreements before signing them, they were not involved in any discussions of the FTA or WTO.	

Source: Compiled by the author (2009).

Table 7.12: Codified analysis of semi-structured interviews on the role of the academia.

Category	**The role of the academia**	
Focus coding		
	No	
Was the academia involved in discussing Oman's involvement in the FTA and WTO?	5	- The academia in Oman was not given any opportunity in discussing, commenting, or analysing Oman's involvement in the WTO and the U.S. FTA.
Reasons for the absence of the role of the academia	5	- The absence of the role of the academia is attributed: - a) to the lack of the Government's confidence on academics to provide in-depth analysis on trade agreements. - b) academics' views may contradict Government policies.
	4	- Academic institutions are capable to advise the Government on issues concerning the society and economy. - They could seek the assistance of other specialised academics.
Theme	Academic institutions were not involved in discussing Oman's involvement in the WTO and the FTA, although they could have the capabilities to do so.	

Source: Compiled by the author (2009).

CHAPTER EIGHT
FOCUS GROUP RECEPTIONS OF OMAN'S FUTURE ROLE IN THE WTO AND THE FTA

8.1. Introduction

The analyses of the data collected from official documents and semi-structured interviews, as explored in Chapters Five, Six, and Seven, have revealed that the WTO legal arrangements in different issues and sectors are more flexible, comprehensible, and comprehensive than those of the FTA and that Oman faces better policy choices under the multilateral WTO approach than the bilateral FTA approach. The analyses have also revealed that the Oman-U.S. FTA was more driven by politics than trade. These results have prepared the ground for the researcher to move forward and analyse the question of the future of Oman's trade under the two trading approaches, particularly when considering the difficulties facing the Doha Round and the political changes in the U.S. Administration. Also, Oman's future trade relations with three important economies, namely China, Iran, and India were considered, as a case for more geopolitically diversified trade. Discussions of these issues were conducted with two focus groups in Oman. The first group's discussion took place in the Ministry of Commerce and Industry (MOCI) on March 25, 2008 and the second in the Ministry of National Economy (MNE) on March 29, 2008. This chapter analyses the data collected from the discussions of the two groups. As is the case of the other empirical chapters, the findings of this chapter are re-produced in codified categories at the end of the chapter.

8.2. The impact of the proliferating phenomenon of FTAs on the WTO

The researcher opened discussions in each focus group by raising the question of whether FTAs acted as stumbling or building blocs to the WTO. The idea behind raising this question was to avoid giving the impression at the very beginning of the discussion that the focus would be on any political issue. As participants became more involved in the debate, the researcher then found it easier to divert the discussions towards the Oman-U.S. FTA.

8.2.1. The MOCI focus group

Two participants clearly held the views that FTAs acted as building blocs to the WTO. They argued that the main objective of the WTO was always to liberalise trade and the FTAs helped achieve this objective very quickly and more effectively than the WTO. The latter had become

too large consisting of over 150 members of different conflicting interests that had made it unable to move forward. Reaching consensus between these members on a single undertaking had become almost impossible due to continuous disagreements between developed and developing countries. This had been the case with the Doha Round which had been going for more than seven years without any substantial progress. Hence, the WTO desperately needed the tool of FTAs to soften the stubbornness of the multilateral negotiations and drive them forward. The researcher questioned about how this softness could be achieved. One participant replied that FTAs were WTO plus agreements as they included more liberalisation commitments and additional regulations on issues such as government procurement, investment, labour, and environment. These issues were highly complicated in the WTO, but FTAs made them accepted by member countries. Thus, the more FTAs signed between WTO members, the easier the multilateral negotiations would become as members' negotiating position would have been softened via FTAs.

However, another participant disagreed with the above-mentioned views and argued that FTAs acted, and would continue to act, as stumbling blocs to the development of the WTO. These FTAs had different complicated arrangements from each other that would be difficult to bring all together under one umbrella. The participant used Bhagwati's famous term, "spaghetti bowels", to describe the confusion and complexity created by FTAs in international trade. Another participant added that he expected that if the proliferation of FTAs continued, the WTO would be at risk of being abandoned completely and international trade would be governed by FTAs. This was simply because FTAs had proven to be easy tools for developed countries to force other trading partners to accept their own agenda, while avoid making more liberalisation commitments in agriculture as required under the WTO. Hence, FTAs proved to be effective means for developed countries to gain the support of their citizens but the WTO would not help such political interests. Interestingly, however, one of the participants who earlier believed that FTAs acted as building blocs to the MTS, disagreed with the argument that the FTAs would replace the WTO in governing the international trading system. He argued that the WTO would always remain the basis for the international trade. It was created to stay, not to be abandoned. FTAs would help the WTO overcome its current problems. This could be demonstrated by the fact that most FTAs referred to the WTO as the basis of their regulations, which clearly proved the importance of the WTO in governing the international trade.

8.2.2. The MNE focus group

Discussions in the MNE group on this issue were not as detailed as they were in the MOCI group. One participant (an expatriate) did not share the view that FTAs would replace the WTO or act as a threat to its existence. This was because the WTO and FTAs were different in nature and objectives, and even the reasons for their existence were different. Thus, they would continue to co-exist. For him, the WTO was an international organisation in the same forum of the United Nations. The WTO became an international club for over 150 members of different interests and levels of development. Members joined the WTO not necessarily because they wanted to liberalise trade or believed in the principles of economic liberalism, but merely because they did not want to be excluded from this big club. However, FTAs were no more than bilateral agreements between two -- or a group -- of countries that could either be driven by political reasons as the one between Oman and the U.S., or by economic reasons as the one between the U.S. and Australia. He added that no matter how proliferating they had become, FTAs would only apply to their parties and thus could not replace the WTO.

Another expatriate participant commented that the above-mentioned opinion of his colleague clearly applied to the case of Oman under the two trading systems. The economy of Oman was very small and Oman had nothing substantial to export to other countries to urge it to join the WTO. Even those sectors, in which Oman had some competitive advantages such as oil and gas, were not made subject to the WTO. Hence, joining the WTO was no more than a global requirement that Oman had to fulfil in the same way that countries join the UN. Similarly, Oman signed the FTA with the U.S. mainly because of political rather than economic reasons. Oman perceived the FTA as a political tool to further consolidate its relations with the most powerful country in the world. He implied that the speed in which negotiations of the FTA were conducted and the lack of preparations for such negotiations demonstrated the political drive behind the FTA. A third participant commented that the two trading systems; WTO and FTAs were arrangements specifically designed, manipulated, and controlled by big powerful economies, namely the U.S., EU, and Japan. The two systems would continue to survive in the future and complement each other because they both served the interests of developed countries. The latter needed both systems to secure open markets for their products and services. This justified the survival of the MTS since 1947 despite the proliferation of FTAs.

8.3. Is the U.S. FTA fair for the small economy of Oman?

8.3.1. The MOCI focus group

When the question about the extent to which the FTA would be fair for the small economy of Oman was raised in the discussions of the MOCI group, interestingly only one participant held a positive answer. The participant recognised that there had been big concerns about the impact of the FTA on the economy of Oman. However, these concerns, in the views of the participant, were no more than illusions that would fade away once the FTA was put into practice and its benefit was realised. The participant added that Oman's commitments in the FTA to fully liberalise different sectors of the economy would harm no one. It would be a win-win game. Government procurement would enforce more transparency and exert more competition in the market, which would in turn benefit the economy of Oman. Labour standards would make the working environment in Oman well-protected and provide assurance for foreign, as well as local, workers to work in the country. Labour standards would also paint a good image about Oman internationally. The same argument applied to environmental measures which would help protect the environment of Oman from exploitation by foreign firms.

However, other participants in the MOCI group did not fully agree with the above views. One participant commented that the FTA was the design of the U.S., constructed and written in a way to satisfy different interest groups in the U.S. Congress, businesses, environmentalists, socialists and others to get it through. Oman had only to accept it as it was or leave it, without being able to make any substantial changes to it. Oman's endeavour to negotiate and sign the FTA with the U.S. was more political than economic. Whether the Omani economy would in the end benefit from this FTA would be very difficult to assess and would remain to be seen in the future. Another participant commented that most FTAs had so far taken place between big and small economies; i.e. between unequal partners. This in itself reflected the unfairness of FTAs to small economies due to incomparable differences with big economies. The case of Oman was no exception. Oman had to make far too many commitments in the FTA than the WTO.

The researcher then commented that Oman's position under the WTO would likely be weakened as a result of its FTA with the U.S. For instance, Oman had fought very hard to stay out of the plurilateral agreement on the government procurement (GPA) in the WTO. But, because it had already committed itself to open its GP market to the U.S. investors as part of its FTA commitments, other WTO members would likely ask Oman to join the GPA and provide

them with similar treatment to what is given to the U.S. Participants agreed with the researcher's views and one of them commented that he expected Japan in particular to urge Oman to join the GPA. This would be one of the main issues to be raised by Japan once the process of the WTO trade review report on Oman was finalised.[1]

Another participant added that Oman would have to re-define its interests under the WTO in light of its new commitments in the FTA. While Oman had endeavoured in the past to stay out of the GPA, it would be now in its interests to officially join this agreement. This was because Oman's GP market would be discriminatorily open for U.S. bidders as a result of the FTA, which would merely lead to uneven competition with local as well as other foreign bidders. Thus, joining the GPA would enable other major players such as Japan and the EU to compete against U.S. investors, which would in turn lead to achieving better prices and higher quality for the procurement of the Government entities.

In the same token, another participant argued that it would be unfair to see the very small economy of Oman being made subject to the very strict regulations on labour standards of the FTA, while other WTO members, including some neighbouring GCC countries, were not committed to such regulations. The already high labour costs in Oman would be expected to increase as a result of the enforcement of the FTA's regulations on labour issues. Oman would always be at risks of being accused of violating labour standards by different groups; if workers in Oman who might over-react in expressing their demands, then the U.S. pressure groups might be interested in launching heavy criticism on Oman

8.3.2. The MNE focus group

One participant in the MNE group commented that international trade had always been dominated by big economic powers. Both the WTO and FTAs were used as tools by these powers who dictated how to govern international trade in a way that served their interests. Thus, rather than speaking about the WTO or FTAs as unfair systems to small economies, one

[1] This is perhaps because Japan will find itself discriminated as a result of Oman-U.S. FTA under which Oman opens its GP market to the U.S.; a preferential treatment that is not extended to Japan or other international players. Interestingly, during the process of Oman's trade review the expected question of when Oman was considering to start the GPA accession process did not come from Japan but from the EC and Canada. Oman responded by a "yes" answer confirming that it will seek to be a party to the GPA (WTO, Trade Policy Review on Oman: Minutes of Meeting Addendum, 2008p).

should speak about the exploitation of big economic powers of the two systems to serve their interests, which caused this unfairness. Both the WTO and FTAs could potentially be good and fair systems for small economies, if a shift in the balance was made more for their interests. The WTO called, in principle, for open markets and trade liberalisation of different sectors on non-discriminatory basis. Special considerations were given to small economies. All of these considerations should serve both big and small economies. But, the insistence of developed countries to only shift trade liberalisation on areas of their interests such as services, investment, and government procurement, while at the same time rejecting to liberalise trade in agriculture, was what had made the WTO an unfair system for small economies. Similarly, FTAs, in principle, called for more trade liberalisation on an equal footing and on a non-discriminatory basis between their parties only. However, the fairness of each FTA depended much on the capability of its parties to benefit from it. Each FTA should be drafted, designed, and negotiated equally by its parties, so that mutual benefit could be realised. If one party dominated the negotiating process according to its own interests, the FTA would naturally serve that party's interests at the expense of the other party. The FTA could then be described as unfair to the latter party. The participant implied that Oman-U.S. FTA was an example of this sort of FTAs. The FTA did not recognise the economic differences between Oman and the U.S. and treated the Omani economy on equal footing with the U.S. economy. Oman could only benefit from the FTA if it had something substantial to export to the U.S. market, but there was nothing.

8.4. The implications of changes in the U.S. Administration on Oman-U.S. FTA

8.4.1. Some expected implications

Only two participants, one from the MOCI and another one from the MNE, felt that political changes in the U.S. Administration would determine the future of the international trading system. If the Republican candidate, John McCain, had taken over the U.S. Presidency, more enthusiasm towards FTAs could have been witnessed. The U.S. would endeavour to rehabilitate FTAs negotiations with other GCC countries individually; UAE, Kuwait, Qatar, and Saudi Arabia. The MEFTA project would move forward. This U.S. resurgence towards FTAs would give the Oman-U.S. FTA the incentive to be more effectively put into practice. The U.S. would be particularly motivated to implement the Oman-FTA to demonstrate to other MEFTA candidates that its model of FTAs was successful and fruitful to its trading partners. The U.S. would then use its FTA with Oman as a model for negotiations with other GCC and MEFTA countries. However, under the Presidency of the Democrat Barack Obama, less

enthusiasm towards bilateralism was evident. The MEFTA project would vanish and, perhaps, more rehabilitation of the Doha Round negotiations would take place driven by the support of the new U.S. President. As a result, the U.S. would have less enthusiasm to focus on the Oman-U.S. FTA as the attention of its trading policy would be diverted towards the MTS. One participant of the MOCI group added that the ultimate outcome would be that the FTA could be used as a political gesture only that would be referred to in some occasions without having direct effects on trade activities between the two countries.

Interestingly, however, another participant of the MOCI group pointed out that the U.S.' drift towards multilateralism or bilateralism in the future would not depend much on the trade policy of the new President. But, it would substantially depend on the success of Doha Round negotiations and the extent to which other major economic powers such as the EU, Japan, China, India, and Brazil would be ready to move the multilateral negotiations forward. If multilateral negotiations were successful, the U.S. enthusiasm towards FTAs would decline. This view was supported by another participant of the same group who added that many Democrats did not support some FTAs not because they did not like bilateral trade agreements as such or they favoured multilateralism, but mainly because they believed that these FTAs did not include enough strict measures on labour and environmental issues. However, as these measures were made stricter and integrated in recent FTAs such as the one with Oman, Democrats had started to show stronger support for them. Thus, the future could witness more Democrats' support to the surge of FTAs than before, because they included strong measures on labour and environment. If developing countries continued to refuse the inclusion of such measures at the multilateral level, stronger support could be witnessed to FTAs by the Democrats.

8.4.2. No implications

Some other participants in the two focus groups felt, however, that whoever was in the White House, and whatever his/her policy would be, would have no impact on the Oman-U.S. FTA. Whether or not, the new President would be more in favour of multilateralism or bilateralism would not affect the implementation of the FTA. The FTA was already signed and ratified by both sides and would be put into practice.

8.5. The future of Oman's trade in light of its current economic difficulties and involvement in the WTO and the FTA

The issue of the future of Oman's trade in light of the difficulties of dwindling oil production, shortage of gas, and increasing level of unemployment was raised in the discussions of the two focus groups. Many participants in both groups regarded these difficulties as the biggest obstacles currently facing Oman. Although Oman's membership to the WTO laid the necessary ground for open and liberalised economy it would not, by itself, provide the magic solutions to Oman's economic problems. They felt that Oman had not utilised its WTO membership in a way that could help it achieve its diversification objectives. One participant in the MNE group particularly commented that there seemed to be no clear linkage between Oman's endeavour to overcome its economic problems and its WTO membership. He suggested that Oman should start pursuing a well-defined strategy to utilise its WTO membership in a way that could help it overcome its problems. Another participant in the MOCI focus group stated that although Oman had witnessed substantial improvement in its GDP for the last few years, this development could by no means be attributed to Oman's membership to the WTO, but mainly to the increase in the price of oil in international markets.

8.5.1. The necessity of adopting a well-defined trade strategy

8.5.1.1. Focusing on specific competitively advantageous sectors

Discussions of both groups shifted to talk about the best strategy that Oman should adopt to overcome its economic problems, particularly in relations to its commitments in the WTO and the U.S. FTA. In both groups, some participants spoke about Oman's competitive advantages such as tourism, fisheries, oil, gas, petrochemicals, and mining. They proposed that Oman should firstly focus its strategy on how to develop each of these important sectors in which Oman enjoyed natural endowment. Challenges facing each sector should be regularly addressed and overcome. This would also require, as commented by one participant in the MOCI group, creating special branding for Omani products that could make them distinguished in external markets. Other participants in the two groups suggested that increasing productivity of the above-mentioned sectors would require special development of human capital through education and training, so that Omanis would obtain the required skills and qualifications to work in these sectors.

Interestingly, one participant in the MNE group pointed out that the Government had already recognised the importance of these sectors as demonstrated in the last two five-year economic

plans. But, another participant commented that the five-year plans only provided general guidelines and a set of objectives but did not introduce the adequate mechanism about how to achieve them or how to follow up their progress. Thus, there was a necessity for the Government to go beyond the five-year plans and establish a special strategy for each sector and identify in detail: the main obstacles facing the development of these sectors, what was needed to overcome them, and how the productivity of these sectors could be made sustainable.

Another participant of the MOCI group stated that focusing trading strategy on specific products in which Oman enjoyed comparative advantages, would no longer help achieve economic development. Countries, in his views, tended to identify the kinds of products and services required in international market and thus, adopted their economic strategy accordingly, irrespective of whether they had competitive advantages in those products or services. For him, information technology services had become the key factor for any successful economy and that what Oman should focus on. Oman had distinguished advantages that could help it achieve this strategy such as its strategic location in the southeast corner of the Arabian Peninsula, very stable political and security systems, strong adherence to free trade and open economy principles, and strong legal system.

However, this argument did not appeal to some other participants of the MOCI group. One participant commented that every country had some competitive advantages over others. GCC countries, including Oman, had the advantages of oil and gas that many other countries did not have or lacked having. These advantages had been the sources of the GCC countries' prosperity for almost the last 40 years and would continue to be so for at least the next 50 years. Thus, although Oman's oil and gas production and reserves were much more limited than other neighbouring countries, the fact that Oman had been an oil and gas producing country could never be ignored nor underestimated. It had been Oman's competitive advantages in oil and gas sectors which had led its developments. Therefore, any strategy to consolidate the performance of the Omani economy should naturally be concentrated on the oil and gas sectors simply because they were Oman's main sources of income. Interestingly, one participant of the MNE group held much similar views. He argued that although Oman had been seeking to diversify its sources of income, most of the distinguished industries established, as part of the diversification process, were oil and gas based industries, such as the Sohar Refinery, Sohar

Aluminium, and Oman Polypropylene Factory. He added that Oman should continue establishing more of these kinds of projects as part of its overall diversification process.

8.5.1.2. Intensifying trade and investment activities with some specific partners

In both groups, the researcher raised the question of who would be the trading partners that could best help Oman implement its economic strategy and achieve more economic growth. Interestingly, most participants in both groups referred specifically to neighbouring Qatar, UAE, Iran, and Asian countries such as India, Thailand, and China. This was due to geographical proximity, cultural similarities, and for some countries such as India and China, due to their large consumer markets where Omani products could gain some market share. Interestingly, two participants in the MOCI group specifically spoke about the UAE and Qatar as the most important strategic partners for Oman. Besides being GCC members, Oman enjoyed very strong political relations with the UAE and Qatar. They entertained strong economic growth with big cash flow and open economies. By utilising the GCC Economic Agreement, Oman could seek to associate its economic and trading activities with those of the UAE and Qatar. The Government of Oman could also seek to enter in different mutual investment projects with the Governments of the UAE and Qatar, particularly in oil and gas sectors.

Nevertheless, one participant of the MNE group held a different view as he argued that although the UAE and Qatar would remain important partners for Oman, they would not necessarily be the most important strategic ones for Oman. Despite their economic strength and substantial cash flows, the UAE and Qatar had their own particular economic policies and objectives that would not necessarily match Oman's economic ambitions. Both countries appeared to be favouring international investors rather than regional ones. Another participant in the MOCI group commented that the Omani policy makers might think that because Oman had liberalised its economy, opened its market, and maintained very special relations with many countries, foreign investors would be automatically encouraged to invest in Oman. This was not necessarily true. There could be other unexposed obstacles that could deter foreign investors from investing in Oman or entering into strategic investment relations with Omani businesses. These obstacles could be present in forms of complex administrative bureaucracy or strong monopoly of some local influential business groups. Thus, the participant proposed that economic policy makers in Oman should conduct thorough assessments on other countries' and foreign businesses' views about how they perceived Oman as a destination for their trade

and investment. They might hold different negative views from what had Oman anticipated in the first place.

8.5.1.3. Adopting a very well-defined negotiating attitude at the multilateral level

Three participants of the MOCI group argued that Oman's position in the WTO should be clearly linked and directed to serve its economic interests. Hence, Oman's negotiating stand in the Doha Round should be in tandem with its strategy to develop sectors in which it entertained natural endowments. Thorough assessment should be conducted on WTO regulations that affected these sectors. These included: oil, gas, petrochemicals, mining, fisheries, and tourism. Oman should also study proposals put forward by other members on these sectors and solidly define and adopt a clear negotiating position of its own. This task should jointly be carried out by the MOCI and MNE. One participant in the MOCI group suggested that Oman should identify those members who shared similar interests and with whom Oman's negotiations could be made stronger. He referred to countries such as India and China due to their increasing trade activities with Oman and their growing strength in the WTO.

Another participant saw GCC countries as the best WTO members that Oman should line up with particularly in relations to sectors such as gas, oil, petrochemicals, and mining. The participant added that GCC exports of these products suffered from high level of tariffs and taxes of different forms in the developed world. Thus, it would be in the great interests of all GCC countries to lobby against these restrictions and call for their liberalisation. Many GCC countries were committed to open their markets for exports of developed countries and liberalise services of banking and telecom for their investors. Thus, developed countries should in turn reduce tariff and non-tariff restrictions on their gas and oil imports. Interestingly, another participant commented that although he supported the idea that GCC countries should act as one solid block in the Doha negotiations, such a collective act would be difficult to achieve in reality. This was because the level of cooperation between GCC countries in the WTO had not been very good. Each country had different commitments from the others as they joined the WTO individually and at different stages of time, which had made the task of reaching a common negotiating position amongst them very difficult. Another participant did not agree with this view and argued that no matter how different GCC countries' commitments were, it would still be in their interests to adopt a common negotiating strategy at the WTO. This was because the Doha Round was very comprehensive and called for much greater trade liberalisations. Thus, even those countries which had a few commitments in services such as

Qatar, Kuwait, and the UAE would be pressurised to make far more commitments in the current Round of negotiations. In the end, they would have to make similar commitments to the recently acceded countries such as Oman and Saudi Arabia. Hence, they could all retaliate by asking for trade liberalisation of oil and gas products.

It is worth noting that the above discussions concentrated only on dealing with gas and oil products as "goods", as participants called for reduction of tariff and non-tariff restrictions imposed against them in external markets. However, I argue, there are some important points that must be considered about such views. Firstly, would it be really in the interests of Oman to fully liberalise gas and oil products? What would be the impact of such liberalisation on the Omani products in local market? As per its current commitments in the WTO, Oman could apply up to 20 percent tariffs against imports of petroleum products from outside markets, which should help protecting its products from the two refineries in Muscat and Sohar. However, if more liberalisation of these products was agreed in the WTO, Oman would be obliged to give up or reduce this protective element. Secondly, the U.S. had been lobbying in the Doha Round for subjecting all gas and oil related services to the GATS. These would entail services such as: repairing and dismantling, drilling, pumping and plugging wells, fire extinguishing, technical testing and analysis, energy distribution, technical consultations, and construction and other related engineering services. The U.S. had also called for the inclusion of energy sectors in the on-going negotiations on competition and investment. This would mean that U.S. companies would entail the rights to invest in the energy sector in equal terms and conditions to local companies. Government practices of protecting national monopolies would not be allowed (International forum on globalisation, 2008). Hence, it is very doubtful that Oman is ready to open all these oil and gas related services and subject them to the WTO regulations. Thus, Oman must be aware of these kinds of proposals and prepare their negotiating stand in a way that would serve Oman's interests.

Another participant in the MOCI group explored that Qatar had put froward a proposal to the Committee on Trade and Environment to classify natural gas and other gas related products as environmental products, so that they could be subject to trade liberalisation negotiations. Qatar had sought the support of gas producing countries to lobby in favour of the proposal. But, Oman was not very enthusiastic to back up the Qatari proposal as it did not want to indulge itself into a new dilemma of being asked to offer new liberalisation commitments in other sectors. Unlike Qatar, Oman had already agreed about making too many liberalisation

commitments and would not be ready to make more new commitments. Also, Oman's exports and reserves of gas were much lower than Qatar's. Thus, lobbying for liberalisation of gas products would not be important for Oman as it was for Qatar.

Quite surprisingly, in the MNE discussions, two participants argued that the WTO would not help Oman achieve its economic strategy of focusing on specific sectors or specific trading partners. By its nature, the WTO was too big a universal organisation whose rules applied to all members. If Oman focused its negotiating stand on specific sectors, it would be asked by many other members to make more commitments on other sectors and give something back in return. Therefore, the best idea for Oman to achieve its economic strategy would be by means of free trade agreements with important trading partners. But, these FTAs should not be as comprehensive as the WTO or the U.S. FTA, but rather they should focus on sectors that were important for Oman and the other trading partner. Hence, the participants recommended that Oman should negotiate and sign FTAs with China, India, and South Korea, as they were, and would continue to be, the most important trading partners to Oman particularly in oil and gas industries.

Another participant in the MNE group commented that Oman would automatically be a preferential trading partner via GCC FTAs with these countries. Hence, Oman could utilise these FTAs to intensify its economic and trading activities with them. However, for another participant Oman should pursue its individual negotiation and sign FTAs with these countries because negotiations under the GCC had proven very complex and long. Also, the political economic thinking of GCC countries differed from one country to another. The economy of Oman was more open and its trade and investment facilitations were greater than other GCC countries. Nevertheless, the researcher pointed out that it would be quite inappropriate if Oman had negotiated FTAs individually outside the GCC umbrella, as Articles 2 and 31 of the Economic Agreement required such negotiations to be conducted collectively. But, participants of the MNE group did not seem to be aware of this condition as they thought that Oman could negotiate and sign FTAs individually in the same way it did with the U.S. The researcher further clarified that after Bahrain and Oman had individually negotiated and signed their FTAs with the U.S., GCC countries attempted to get around Articles 2 and 31 by regarding the U.S. FTAs as exceptions. This took the participants to surprise. They were not aware of it.

8.5.1.4. Training and education

Participants in the two groups emphasised the importance of education and training for achieving a successful strategy. One participant in the MOCI group argued that Oman had indeed pursued open economic policies, joined the WTO, signed the U.S. FTA, and had been negotiating different FTAs with other countries via the GCC. But, all of these strategic commitments were not accompanied by training programmes. If Oman wanted to benefit from these arrangements and understand their dispute settlement mechanism, it would have to pursue a very aggressive programme for qualifying and training Omanis either as trade negotiators or as economic analysts. Similar comments were made in the MNE group when one participant emphasised that trade agreements at different levels; the WTO, bilateral FTAs, or GCC, provided the opportunities for a more dynamic Omani economy, where trade activities and foreign investments would increase, and employment opportunities would be created. However, if Omanis were to benefit from these opportunities they would have to acquire the necessary qualifications and skills. Another participant in the MNE group argued that when negotiating FTAs or making business deals with big economies such as China, India, Japan, and South Korea, Oman should ask for special training assistance to its citizens, thus, utilising the FTAs with these countries to help training Omanis.

8.6. Oman's trade relations with some important regional economic powers

8.6.1. Oman's trade relations with China

Most participants in the two focus groups regarded China as one of the most important trading partners that Oman should enhance its trading and investment activities with. Participants presented different justifications for that. One participant in the MOCI group spoke about the increasing importance of China as the fastest growing economy and the world number one in terms of population, and thus potentially the biggest consuming country in the world. The participant argued that Oman should find its own niche in this Chinese global phenomenon and seek to strengthen commercial and investment ties with it, particularly in energy sectors. Another participant commented that Oman, and other GCC countries, should utilise their FTA with China to lock-in China's involvement in the security of the region by increasing their trading and investment cooperation with it. Direct Chinese investment in the GCC's oil and gas sectors would create a more balanced and stable security system in the region as it would reduce the dominations of the U.S. and minimise the potential threat of Iran to GCC countries. Another participant from the Trade Statistical Department of the MOCI, clarified that China

had been one of the most important importers of Oman's crude oil, which had made the balance of trade in favour of Oman. He indicated that in 2006, Oman's total exports to China were 34.4 percent of the overall total exports, and its imports from China for the same year were only 3.4 percent. He added that these figures showed the importance of China for Oman's trade.

Another participant in the MOCI group clarified that Oman had already realised the importance of China as an influential player in international trade. This could be witnessed by the increasing number of the mutual visits at high levels between the two countries aiming to increase the level of their economic cooperation. Also, the last few years witnessed increasing Chinese investment in the energy sector of Oman. For instance, in 2002 China National Petroleum Corporation (CNPC) bought from Japex a small oil block and managed to lift up its production from 2,000 to 12,000 barrel per day. In 2004, China was also given the right for exploration of oil and gas in blocks 36 and 38 in the southern part of Oman. Another participant commented that China had been seeking to actually own oil and gas fields, or buy some shareholding in oil and gas companies around the world, so that it could secure energy supply. Oman had not been an exception of this policy. The CNPC had established a joint venture called Daleel Petroleum Company with the MB Holding Company, which was one of the biggest local companies in the oil and gas sector, for the purpose of operating Block 5. He added that Oman should encourage more of these kinds of investments with China, so that it could diversify the list of foreign investors in its energy sector away from Shell.

8.6.1.1. Can Oman learn from China's experience?

In the MNE group, the researcher questioned: how could Oman learn from the Chinese experience to overcome its energy problems, particularly when considering the fact that Oman had already started to suffer from oil and gas decline? Different answers were presented. One participant argued that it would be difficult for Oman to imitate China, as they were simply different and unmatchable economies. China was a powerful economy with perhaps imperialistic ambitions to dominate the world economy. Thus, China was always ready to take the risk and wonder around the glob to own oil and gas wells, despite the presence of political insecurity in some countries. He added that China had the financial and military capacity to protect its interests in these countries. Oman, on the other hand, was a small economy with no more than two million citizens and limited financial and military capacity. Even though Oman had started to experience the problems of declining oil and gas productions, these declines were related to exports only and did not affect Oman's energy supply for local consumptions.

Interestingly, however, this view was not fully supported by another participant who argued that Oman could indeed learn good lessons from the Chinese experience. For him, Oman's energy problems had become more pressing than any time before. Its oil production had been declining substantially for the last few years and its reserves of gas had appeared to be less than had been estimated. These were serious problems and justified why the Government had been pursuing all possible means to overcome them. More intensive programmes of oil and gas explorations had been carried out for the last few years. Also, the Government's investment portfolio from oil income via Oman Oil Company (OOC) had been further increased and diversified. Some of these investments were even made in China when the OCC purchased some shareholdings in two Chinese companies.[2] These activities proved that Oman was, in some ways, pursuing similar investment policies to China by purchasing some shareholdings in foreign companies in the energy sectors, although in a much smaller scale. The participant added that the idea of seeking to purchase oil or gas fields in certain countries could be a useful economic policy for Oman and worth thinking about. Oman could take an advantage of its good political relations with countries such as Sudan, Yemen, Iran, and Kazakhstan, and utilise them in acquiring the rights of explorations, operations, and exploitations of oil and gas wells. In other words, Oman's investment in energy sectors should not only be concentrated inwards but also outwards. Such external investments would not only yield more diversified sources of income for the Government, but they would also help it accelerate its economic development and establish more oil and gas based industries in the country. Oman already had two oil refineries and three gas liquefiers, but with the continuous decline in production, these assets could become partially redundant if no new discoveries were made. Hence, Oman could import crude oil and gas produced from its investments in external wells and refine/liquefy them in Oman, either for local consumption or external exports. The participant further added that the idea could appear too ambitious, but not unworkable.

8.6.1.2. How can Oman benefit from China's investments in Africa?

In the two groups, the researcher questioned about how Oman could learn and benefit from the Chinese investments in Africa in the energy sector. Some conflicting answers were received as elaborated below.

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[2] The OCC purchased 30 percent shareholding in the Chinese petrochemical plant Qingdao Lidong Chemical and 8 percent of the issued shares of China Gas Holdings (Zawya, 2008c).

8.6.1.2.1. Negative opinions

One participant in the MOCI group argued that Africa had always presented good potential for investment. But, due to political and security unrests, such potential remained unexploited. Also, what could deter a small country such as Oman from seeking large scales investment in some African countries would be the issues of human rights. Oman would not want to be criticised as a supporter of the regimes of these countries. However, China had the need, the will, and the strength to invest in many African countries. The issues of democracy and human rights did not concern China that much. Two other participants of the MOCI group appeared to be supportive of this view.

However, in the MNE group, no participant raised the issue of democracy and human rights. But, one participant interestingly argued that this whole business of securing energy supply was part of what he called "Chinese globalisation" that entailed behind it a hidden agenda of "Chinese imperialism". China's ambition of owning and controlling oil and gas wells could entail imperialistic objectives that go beyond securing energy supply. The world economy could then be shifted from the U.S. imperialism to the new Chinese imperialism. This had already been a growing concern for the U.S. and the West as a whole, particularly when considering the fact that China was a communist country with historically and traditionally imperialistic ambitions. Oman should realise these concerns of the West and not indulge itself into too many mutual investment projects with China. However, no other participant in the MNE group appeared to be sharing this view.

8.6.1.2.2. Positive views

Discussions in the two groups produced other more positive views about the possibility for Oman to learn and benefit from the Chinese investment experience in Africa. One participant in the MOCI argued that Oman had always enjoyed strong political relations with many Eastern African countries that stemmed from its geographical proximity, historical presence, and cultural influence, in these countries. These were important factors that Oman could utilise in its pursuance to diversify its investment particularly in the energy sectors. He added that much of Africa entailed substantially unexplored potentials in these sectors that international companies were now competing for. Oman could seek its niche and be directly involved in the exploration and exploitation activities in some of the oil and gas fields. Oman could also enter in joint ventures with some foreign oil and gas companies in Africa, including Chinese ones. In

response to a question raised by the researcher about whether Oman, as a small economy, had the capacity to make such investments, the participant positively commented that Oman had the financial as well as the professional capacity to do so. Oman had been enjoying a high level of revenues due to the unprecedented international high prices of oil and gas, which could be utilised for investment in Africa. Oman had been an oil and gas producing economy for decades, which had facilitated the establishment of specialised companies in the explorations, exploitations, and marketing of oil and gas such as MB Petroleum, PDO, OLNG, and QLNG. Similar views were presented by another participant in the MNE group, who argued that Africa could be Oman's sources of oil and gas supplies in the future. He repeated the above-mentioned proposal that Oman could import crude oil and gas from Africa and process them in Oman either for export or internal consumption. The Port of Salalah[3] would be of a great help for Oman as it could be utilised as a hub to transfer shipments of crude oil and gas from Africa to Oman, and from Oman to the outside world.

Another participant also held similar views and argued that being positioned in the south, Salalah Port could play an important role in improving Oman's export and trade relations with Africa with minimum transportation costs. But, the port unfortunately had not been fully utilised. The free trade area adjacent to the port suffered from many problems as industrialisation of many planned projects had been hampered by lack of gas and power. There was an urgent need to address these problems to fully utilise the potentials of the port and the free trade area adjacent to it. The idea of importing crude oil and gas from Africa could be a very good one but needed strong determination to successfully put it into practice. The participant proposed that Oman could establish an oil refinery and other necessary infrastructure to utilise some of the imported oil from Africa for the industries in the free trade zone adjacent to the Port.

[3] The Port of Salalah is located in the southern part of Oman at the heart of the Indian Ocean Rim. It provides an access for ships to the Middle East, the Indian Subcontinent, East Africa, and the Indian Ocean Island. The Port has the facilities to handle bulk cargo, containers, general and liquid cargoes. It also offers value added services such as bunkering, container repairs, a container freight station, warehousing, and ship repairs. The Port is administered by the Salalah Port Services Company (SAOG) in which A.P. Moller Finance SA of Switzerland owns 30 percent of shares, the Government of Oman 20 percent, Dhofar International and Development and Investment Company 11 percent, and Pension Fund of the Ministry of Defence 10 percent (Port of Salalah, 2009).

8.6.2. Oman's trade relations with Iran

8.6.2.1. The status quo: modest trade activities

Discussions in the two groups revealed strong convictions amongst participants about the importance of Iran as a potentially strategic trading partner, but such potential had not been fully utilised. One participant in the MOCI group highlighted that Oman's trading activities with Iran were very low and did not match their geographical proximity. Oman's exports and imports from Iran for 2006 constituted only 1 percent of its total exports and imports. Another participant pointed out that much of Iranian products such as foodstuff, livestock, pistachio nuts, and carpets came to Oman via the UAE, which made them more expensive in the Omani market. A third participant explored that although there was an Omani trade office in Bandar Abbas whose task was to promote Omani products in Iran, trade between the two countries remained very low.

8.6.2.2. Political relations could lead to improved trade and economic cooperation

In both groups, participants attributed the low level of trade activities between Oman and Iran to the latter's political problems with the West over its nuclear programme. In the MOCI, one participant pointed out that Oman had been very carefully attempting to maintain a balance between its pro-Western policy and its relations with Iran. This balance prevented Oman from indulging itself into too many long term investment projects with Iran, as it would not want to be seen as shifting away from its pro-Western policy. At the same time, it did not want to upset its good political relations with Iran. But, another participant commented that despite the geopolitical obstacles, the economic cooperation between Oman and Iran had noticeably improved in the last few years as demonstrated by the increasing mutual visits at high levels. The two countries started negotiating gas deals whereby Iran would supply Oman with gas at an agreed price but these negotiations had not yet been concluded.[4] Also, the two countries were intending to enter into a shipbuilding project and establish mutual investment projects in tourism and medicine. This revival in economic cooperation, in the views of the participant, reflected the two countries' determination to utilise their strong political relation to serve their economic interests. Another participant commented that in order for Oman to further enhance

[4] According to Arabianbusiness (2007, May 17) Oman signed a memorandum of understanding with Iran to negotiate gas deals whereby Oman could import a billion cubic meters a day of Iranian gas, and develop the joint Bukha-Hengam field along with other fields in Iranian waters and pump gas to Oman. The gas would be cooled for export at the Omani plant of the Qalhat Liquefied Natural Gas Company and then exported to international markets by a joint company between the two countries.

its trade and investment relations with Iran it would need to open direct sea and air flights with Iran, so that to ensure smooth movement of goods and people between the two countries.

Interestingly, however, another participant in the MOCI group appeared to be quite sceptical about the sincere will of Iran to enter into strategic economic projects with Oman or to agree to supply it with gas that it desperately needed. He argued that Iran might drag negotiations with Oman over the gas issue for too long, so that Oman would continue its strong opposition against any possible U.S. attacks on Iran. Whether or not Oman would manage to get the gas it wanted from Iran would, in his views, remain uncertain issue and would depend on how the U.S.-Iranian tensions developed. However, the participant, who was in favour of developing economic relations between the two countries, commented back that these were the political orders of the day. Oman should utilise them for its economic benefits. The political relations between the two countries had been very good and there was no reason why Oman should not utilise them for its economic benefits.

Discussions in the MNE group did not reveal much optimism about the future of economic cooperation between Oman and Iran as in the MOCI group. One participant commented that despite the on-going talks to improve the economic relations and enter into joint ventures between the two countries, the geopolitical factors in the region would determine the future of their economic cooperation. Although Iran would potentially remain an important trading partner for Oman particularly in the energy sector, trade relations between the two countries would not witness substantial improvements unless there would be a significant change in the political thinking of Iran as well as the U.S. Administration. Only if the two sides accepted each other as friends, Oman's economic cooperation with Iran could improve and then Oman could count on Iran as an important strategic trading partner. However, until that happened Oman would continue its trading and economic policies more towards the Far East and India than with Iran.

8.6.2.3. Iran's accession to the WTO

The researcher questioned about whether Iran's membership to the WTO would help improve its trading activities with Oman. Discussions in the MOCI group revealed clearly positive answers. One participant argued that Iran's accession to the WTO would encourage Oman to intensify its trading activities with Iran as much of the tariff and non-tariff barriers that were currently imposed by Iran would be removed. Oman's exports would be treated equally with

the Iranian and other foreign products on non-discriminatory basis. Another participant added that Iran's membership to the WTO would help it integrate in the global economy and would paint better image about it, which would in turn help achieve more peace and stability in the region. Another participant commented that Iran's membership to the WTO would reflect the consent of the U.S. and the EU to integrate Iran in the world economy. These consents would in turn pave the way for Oman to intensify its trade and investment activities with Iran. Also, Iran's membership to the WTO would provide Oman with the assurance that any trade dispute between the two countries could be resolved via the dispute settlement process of the WTO.

In the MNE group, discussions did not reveal much optimism about Iran's negotiations with the WTO. One participant argued that although Iran's membership to the WTO would benefit Oman, this membership would be difficult to achieve. The U.S. and the EU would drag negotiations with Iran for a very long period and it would take Iran many years before it could become an official member to the WTO. Another participant argued that Iran's WTO negotiations would be directly linked to its current problems with the West. Unless Iran reached a mutual agreement with the U.S. on its nuclear programme, Iran's WTO negotiations would be made very complicated and long. The U.S. had for long objected to Iran's application to the WTO, and would continue to make matters more complex for Iran to join the WTO. Another participant further commented that joining the WTO had by its nature become a very difficult task. Every late comer would have to make more liberalisation commitments in goods and services than earlier members. Iran would be asked to make such commitments but whether it would be prepared to do so would remain an open question. Iran had always been a closed economy with high level of tariffs and non-tariff barriers. Thus, shifting into an open economy with minimum trade barriers would be a very difficult task for Iran to achieve. Because of that, Oman and other GCC countries should not put much hope on Iran's membership to the WTO.

8.6.2.4. The project of Iran-GCC FTA

In the MOCI group, four participants clearly felt that negotiating an FTA with Iran, via GCC, would benefit the two sides as it would liberalise trade and allow for more economic integration between them. However, one of those participants expressed his doubt about the seriousness of Iran to enter into an FTA with the GCC. Although Mahmood Ahmedi Najad of Iran did propose at the GCC summit in Doha (3-4 December 2007) to establish an economic pact between Iran and the GCC countries and to negotiate an FTA with them, things just

stopped there. It was not clear what such a pact or an FTA would entail. For two other participants in the MNE group, Najad's economic proposals were no more than tactical moves to soften relations with GCC and create a more friendly political atmosphere. But, whether or not, Iran would be serious about carrying them out would remain to b seen and that would depend much on political realities in the region and how the U.S.-Iranian tensions would develop.

The researcher then questioned about the extent to which Iran -WTO negotiations would be hampered by the proposed Iran-GCC FTA negotiations, and which of the two trading arrangements would be better for the GCC countries; i.e. would it be Iran's commitments in the WTO or Iran-GCC FTA? One participant in the MOCI group argued that GCC countries could start and finalise their FTA negotiations with Iran without being concerned much about Iran's WTO membership negotiations. The latter would take long time to conclude, while the FTA negotiations with Iran could be much shorter and would give the GCC products and businesses special favourable treatment in the Iranian market that other foreign products would not enjoy. Another participant stated that the GCC- Iran FTA would make Iran's negotiating position in the WTO more difficult as it would be asked to offer all other WTO members similar treatment to those provided to the GCC. Interestingly, discussions in the MNE group did not reveal similar results as participants continued to view Iran's invitation to the GCC to negotiate an FTA, as well as its applications for the WTO membership, as no more than political moves to lift it from its current isolations. But, the success or failure of these moves would much depend on how the U.S.-Iranian relations developed. One participant commented that even if the GCC countries felt happy to negotiate an FTA with Iran, the geopolitical factors would determine the outcome of these negotiations. These factors were not only related to the U.S.-Iranian relations but entailed Iran's relations with two GCC countries with whom Iran had some serious political problems. These were the UAE and Bahrain; the UAE over its three islands that had been occupied by Iran, Abu Musa, Greater, and Lesser Tunb and Bahrain over the continuos Iranian influence in its internal affairs. Without the support of the UAE and Bahrain, the GCC-Iran FTA negotiations would not be successful.

8.6.3. Oman's trade relations with India

8.6.3.1. The status quo

Discussions of both focus groups generally revealed that Oman should have great interests to enhance its trade and economic relations with India, but these relations have not yet been fully

utilised. Different issues were discussed and different opinions were put forward about how Oman could utilise its special relations with India to improve its economic performance.

8.6.3.1.1 The MOCI group

One participant pointed out that although Oman's total imports and exports with India increased noticeably for the last few years, India was still not amongst the big trading partners with Oman. The balance of trade was always in favour of India which should, by itself, give Oman the incentive to increase its exports to India in the future. Another participant from the Statistical Department of the MOCI pointed out that Oman's exports to India constituted only 1.67 percent of Oman's total exports for that year. On the other hand, Oman's imports from India increased gradually for the last few years and constituted 5.3 percent of Oman's total imports for 2006. Another participant spoke about the geographical proximity as another important factor that should encourage Oman to seek increasing its trade activities with India, particularly when considering the fact that both countries were among the first founders of the Indian-Ocean Rim (IOR-ARC) whose objective was to enhance economic cooperation and promote trade liberalisation between member countries.

However, another participant argued that the IOR had been established for around 12 years but had not been exploited by Oman and India to enhance their trade activities, perhaps because the IOR was not the most suitable umbrella for that. The participant suggested that Oman should establish a clear strategy about how to exploit its special relations with India to serve its diversification programmes. He repeated what had been discussed earlier was that Oman should produce distinguished and well-branded products specifically targeting Indian markets, based on quality and taste. These could include; dates, metals, gypsum, cement, petrochemicals, plastics, and other types of products in which Oman had some natural comparative advantages. Another participant, who appeared to share this view, added that there were some factors that could play a useful role, if utilised properly, in helping Omani products penetrate the Indian markets. For example, the daily flights from Muscat to India could be exploited in the marketing schemes of Omani products to India. The historical ties and cultural interchanges between Oman and India and the ability of many Omani nationals to speak Urdu fluently could be all facilitating factors to promote Omani products in India. He added that Omani businesses could also benefit from the big Indian community in Oman to learn about the types of products, segments, and local markets, which they should target in India, and the best marketing methods to do that. Interestingly however, this last proposal did not appeal to

another participant who argued that the Indian community in Oman would always seek to help Indian businesses to be established in Oman but not the contrary. In other words, due to their conservative nationalistic nature, the Indian community would not endavour to help Omani businesses and products to locate themselves in the Indian markets. Despite its diversity, the Indian market was much protected and there were many invisible bureaucratic obstacles to invest in India.

Another participant added that both India and Oman should have more incentives to increase their economic relations, investment, and trading activities beyond the mere exchanges of merchandise goods. The growing economy of India provided various good investment opportunities for Omani companies, both Government and private. These companies could benefit from the very ambitious privatisation programme of India by seeking to invest and own some shareholding in Indian corporations in oil, gas, petrochemicals, pharmaceuticals, banking, manufacturing, and insurance. Such investments could help the Government diversify its investments and the Omani private companies to further integrate in the global economy. Indian investors, on the other hand, should also be attracted to invest in Oman in similar sectors, given the openness of the economy of Oman and its endeavour to attract foreign investors.

Another participant pointed out that the last few years had already witnessed increasing investment activities between Oman and India. The Oman-India Fertiliser Company (OIFC)[5] project successfully established in Sur in the eastern region of Oman was a clear example for that. India signed a 15-year agreement with Oman for buying the whole urea production of the factory at a fixed rate. It had been regarded as a secure income for the OOC. Also, as part of the contract establishing the Oman-India Fertiliser Company, the Indian Farmers Fertiliser Company (IFFCO) would provide the necessary training for Omani nationals working at the project. Another sign for increasing investment activities between India and Oman had been in the banking sector. In 2004, India established the State Bank of India in Oman, which was regarded as the second Indian financial institution to be established in Oman after the Bank of Baroda which started its operation in 1976. Also, the two biggest Omani banks; Oman International Bank (OIB) and Bank Muscat established branches in India.

[5] The OIFC is 50 percent owned by Oman Oil Company (OOC) and 50% percent by two Indian companies; Indian Farmers Fertiliser Company (IFFCO) and Krishak Bharti Cooperative Limited (KRIBHCO) (OOC, 2008).

Another participant suggested that Oman, for the last few years, had realised the importance of India as an important strategic economic partner and had sought to enhance its trade relations with it. This vision could very clearly be realised during the special visit of Sayyid Fahad bin Mahammood, the Deputy Prime Minister of Oman, to India (December 2007) when both Oman and India announced their intention to establish a joint holding company to invest in infrastructure, tourism, and energy. Another participant added that Oman could greatly benefit from India in education and training particularly in IT, so that young Omanis would acquire the required professions and skills to work in different fields. The participant added that India had already helped Oman in establishing the Knowledge Oasis Muscat.[6]

8.6.3.1.2. The MNE group

Discussions in the MNE group revealed similar views to those mentioned above. One participant particularly argued that Oman's trade relations with India should not only focus on how Oman could increase its exports to India, but similar attention should be given to imports. India enjoyed natural comparative advantages in labour, agricultural products, livestock, and textiles. India had also become a leading economy in the IT businesses. India's IT-related products had gained a good reputation and become more reliable. Given the fact that Oman had been substantially an importing country in most of the non-oil and gas sectors, Oman should seek to enhance its trade with India and pursue all possible means to lower trade barriers with it. Another participant pointed out that India's trade relations with the neighbouring UAE had been much stronger than with Oman. The UAE was India's top trading partner not only in the Arabian Gulf, but also in the Middle East. As was the case with Iran, many of Oman's imports from India, came via UAE, which resulted in increasing their costs in the Omani market. Thus, Oman should distinguish itself more as an important trading partner to India and encourage direct imports from it.

8.6.3.2. Enhancing trade with India: multilateral or bilateral approach?

Discussions in the two groups about how Oman could best enhance its trade relations with India revealed that participants commonly felt that both multilateral and bilateral trade

[6] The Knowledge Oasis Muscat (KOM) is located in Muscat nearby the Rusayl Industrial Estate and it is a complex of different technological based enterprises in commerce, security, software development, and international airline call centres. There are over 60 firms established in the KOM (KOM, 2008).

approaches should complementarily act to enhance trading activities between Oman and India. However, they differed in some details. One participant in the MOCI group pointed out that both Oman and India had been members to the WTO and each one of them knew their obligations and rights. Multilateral arrangements, based on non-discrimination, were enough by themselves to encourage more trade and investment between Oman and India. However, trading and investment activities remained low between the two countries not because of the weakness of the MTS arrangements but more due to the lack of wills and enthusiasm of the two countries and their private businesses to utilise them. The FTA with India would not make much difference. If signed, it could either be exploited or remain as no more than a "document on paper" that would be referred to in some few occasions but without tangible effect. Unless the two countries sincerely believed in the substantial benefits they could achieve from enhancing their trade activities, neither the WTO nor the FTA could be of a much help.

Interestingly, however, another participant in the MNE group appeared to hold quite different views as he argued that the FTA could be a better tool to enhance trade between Oman and India than the WTO. Via the FTA, Oman could provide India with special preferential treatments in goods, services, IT, and investment that were not extended to other external parties. India would then be allured to intensify its trade and investment with Oman, rather than being treated equally with other trading partners as was the case under the WTO. Omani investors, in turn, would enjoy similar preferential treatment in Indian market. However, the researcher pointed out that this could have been the case if Oman had not had any other FTAs. But, this alleged special preferential treatment to India had already been credited to the U.S. and would be guaranteed to the EU, Australia, China, Iran, and many others that were negotiating FTAs with GCC countries. In other words, the FTA with India would not offer India something special. The participant agreed with the researcher's views.

In the MOCI group, discussions then shifted to talk about how Oman could benefit from India's membership to the WTO. One participant pointed out that India was a leading figure in the MTS history. It was one of the 23 founders of the GATT 1947 and had been an active participant in the multilateral negotiations before and after the establishment of the WTO. India could be described as one of the strongest representatives to developing countries' interests in the Doha Round negotiations. Along with Brazil and South Africa, India formed the so-called G20 to represent the interests of developing countries in the Doha negotiations. India had always refused to include the Singapore issues in the WTO negotiations; government

procurement, investment, and trade facilitations. It also urged the WTO to focus on implementation issues rather than expanding to new areas. India particularly was reluctant to include labour issues in the WTO and had been successful in resisting this. India had also called for further liberalisation of movement of persons; one of the GATS four modes. The participant believed that Oman, as a developing country, had similar interests in most of these issues and thus should tie its negotiating position in the Doha Round with India and other countries of similar interests.

However, some other participants did not fully share the above-mentioned views. One participant pointed out that not all the issues that India was lobbying for suited Oman's interests. For instance, India had been lobbying developed countries for the liberalisation of their agriculture but this would not work for the benefit of Oman as a net-food importing country. If such liberalisation was achieved, the price of food would increase substantially. Another participant added that the G20 was created as a retaliatory movement of agricultural producing countries in the developing world against the protectionist measures imposed by developed countries. The latter's continued support to their national farmers affected agricultural exports of the former. But, Oman was not an agriculture country and the agenda of G20 did not suit its interests. Oman was already experiencing the problem of high prices of food imported from outside. The situation could be worse in the future when, or if, liberalisation of agriculture took place. The participant suggested that Oman and other GCC countries should address this concern at both the WTO negotiations and their FTA negotiations with India and other countries, so that special considerations could be given to them as net-food importing countries. Another participant added that India could appear at one stage of time as lobbying for issues that of interests to developing countries but its enthusiasm could be a short-living one. For instance, India was once one of the very enthusiastic lobbyers in the WTO against the strict rules of intellectual property rights due to their negative impact on developing countries particularly in relation to medicine production. However, this Indian enthusiasm faded away and India became less keen about this issue due to the increasing pressures by the U.S.

Nevertheless, some other participants in the MOCI group still felt that the long experience of India in the WTO could benefit Oman. One participant suggested that Oman could benefit from India's negotiating experience to train Omanis to gain the required skills for negotiations. Oman could also seek India's advice about the best negotiating position that Oman should

undertake in the current Doha negotiations. He added that India helped Oman during its WTO accession as it was a party of the WTO team that negotiated its membership. India played the role of being a very soft negotiator and behind the scene it provided useful advice on how to tackle certain questions that were forwarded by the U.S., the EU, and Japan.

Another participant added that Oman had never experienced the process of the WTO dispute settlement and could benefit from India's long experience in this matter. But, one participant commented that Oman had so far not entered into any dispute with any other country which could be regarded as a good record for Oman. It demonstrated that Oman was implementing WTO measures effectively. However, the researcher did not share this view and argued that entering into trade disputes could be seen as a healthy process as it would reflect Oman's interaction in the global economy. Not having any record in dispute settlement did not necessarily mean that Oman was perfectly implementing WTO regulations, but it could possibly mean that Oman lacked the knowledge or the appreciation about the importance of multilateral dispute settlement. The latter was not only about being complained against, but also about Oman being able to raise a complaint against any possible discrimination that could be practised against its exports and investors in overseas markets. Most economies in the world were involved in trade disputes with each other. Another participant commented that many developing countries linked trade disputes to political relations and that could prevent them from raising disputes against other countries, particularly against the most influential states.

8.7. Conclusion

Discussions in the two groups revealed interesting and contending views about Oman's involvement in the multilateral and bilateral trading approaches and the future of this involvement in light of the difficulties facing Doha's negotiations and the changes in the White House. In spite of the very different, and sometimes conflicting, views about many of the issues discussed in the two groups, there were certain areas in which participants appeared to share quite common views. Firstly, many participants in the two groups clearly believed that the U.S. FTA was politically driven and would have limited benefits for Oman's trade, which further supports the earlier findings of the thesis. FTAs with India, China, and Iran were perceived to be more beneficial for Oman than the U.S. FTA. Secondly, most participants were convinced that Oman had not utilised its membership to the WTO in a way that it could serve its trading interests. They felt that Oman should determine its own negotiating stance at the Doha Round in a way that would serve its interests and utilise India and China as supportive

partners. Thirdly, most participants felt that Oman's trade with China, Iran, and India were not satisfactory and needed to be strengthened in a way that would help Oman achieve its diversification objectives, as India and China could be of important support for Oman in the multilateral negotiations. But, not all the agenda of India or China could match Oman's interests. These two countries are agricultural and textiles producing countries and have their own agenda on that.

Fourthly, participants commonly agreed that Oman's trade relations with India and China could be substantially improved via trade tools; signing FTAs, pursuing mutual consultations at multilateral level, and entering into joint investment in energy sectors. Fifthly, however, unlike the case of India and China, many participants in the two groups felt that geopolitical factors, associated with Iran's conflict with the U.S. over its nuclear programme, had been and would continue to condition Oman's trade relations with Iran. Participants argued that although the two countries had in the last few years shown strong inclination to enhance their economic relations, the extent to which could this ambition be successfully put into practice would depend much on how the dispute over Iran's nuclear programme developed.

Nevertheless, I argue, both Oman and Iran need each other politically as well as economically. If Iran was attacked by the U.S. or Israel, Oman would undoubtedly suffer from the consequences of such attacks. The spill-over of the war would have severe consequences on Oman and the region as a whole. There would be no guarantee whatsoever that Iran would not retaliate by blocking oil ships from entering the Strait of Hurmuz and by attacking U.S. bases in Oman. Therefore, it would be of the utmost interests of Oman to pursue all diplomatic means to reach a reconciliatory agreement between Iran and the U.S. over its nuclear programme. Iran is aware of the important role that Oman has been playing in ensuring stability and security in the region. This awareness is mirrored in the continuos political consultations between Iran and Oman. This could be realised from the increasing mutual visits at high levels between the two countries as on April 20, 2008 when an Omani delegation headed by the Deputy Prime Minister visited Iran. Interestingly, the mutual political concerns of attempting to avoid military conflict seem to encourage noticeable improvements in the economic/trade relations between the two countries. Many talks have been going on for mutual investment in tourism, medicine and energy. Oman needs to import gas from Iran, while Iran in turn, needs Oman to continue to act as a mediator for peace in the region. Whether these

mutual interests and ambitions would continue to be realised in the future depend much on how the Iran-U.S. disputes develop.

As in the previous empirical chapters, this chapter now turns to illustrate the above detailed and comprehensive findings through "codification analysis", based on common categories that are further broken into other smaller categories, as is demonstrated in the tables below.

8.8. Codification analysis

Table 8.1: Codified analysis of focus groups on the impact of FTAs on the WTO

Category	**The impact of FTAs on the WTO**	
Focused coding		
	No/FG	**The views**
FTAs act as building blocs to the WTO	2/MOCI	- FTAs are effective tools to soften the WTO negotiations. - FTAs will not replace WTO but help it overcome its challenges. - WTO will remain the basis for the international trade.
	1/MOCI	- FTAs contain issues such as GP, environment, and labour, which have been difficult to incorporate into the WTO system. - The more countries sign FTAs, the easier they become to accept these issues in the WTO.
FTAs act as stumbling blocs to the WTO	1/MOCI	- FTAs differ from each other and it is difficult to bring all together under one umbrella.
	1/MOCI	- If the proliferation of FTAs continues, the WTO will be at risk of being abandoned completely. - International trade will be governed more by FTAs.
FTAs and WTO will continue to co-exist because they are completely different systems	1/MNE	- FTAs do not act as a threat to WTO, nor will then replace it. - FTAs and WTO will continue to co-exit because reasons for their existence and objectives are different. - The WTO is an international organisation as the United Nations. - Countries join the WTO not necessarily because they want to liberalise trade, but to avoid exclusions from the WTO club. - FTAs are no more than bilateral agreements driven by economic or political reasons.
	1/MNE	- Oman joined the WTO because it was a global requirement in the same way countries join the UN. - Oman signed the FTA to consolidate its relations with the most powerful country in the world, the U.S.
	1/MNE	- Both the WTO and FTAs will continue to survive as developed countries need both systems to secure open markets for their products and services.
Theme	The conflicting opinions reflect the very debatable nature of the topic in the literature. But, the important fact remains that Oman is a party to two different trading systems and must abide by the regulations of both.	

Source: Compiled by the author (2009).

Table 8.2: Codified analysis of focus groups on whether the FTA is fair for Oman's trade

Category	**Is the U.S. FTA fair for the trade of Oman?**	
Focused coding		
	No/FG	**The views**
Positive views	1/MOCI	- The FTA will not have negative effects on Oman's trade - Oman's commitments under the FTA will work for its benefit. - Regulations on GP, labour, and environment will enhance Oman's standards.
Negative views	Others/ MOCI	- Many participants did not agree with the above views.
	1/MOCI	- The FTA is designed by the U.S. to satisfy different interest groups. - Oman had to accept the FTA as it was drafted by the U.S. without being able to make substantial changes. - Potential impact of the FTA on Oman's trade remains to be seen.
	1/MOCI	- Most FTAs are unfair as they are made between unequal partners. - Under the FTA Oman is obliged to make far too many commitments than under the WTO.
	Researcher/ MOCI	- Oman's position in the WTO may be weakened as a result of its new commitments under the FTA. - Under the WTO, Oman is not yet a party to the GPA, but because it agreed to commit itself to the GP regulations of the U.S. FTA, it may be asked by other GPA parties to officially join this agreement.
	Others MOCI	- Other participants shared the views of the researcher.
	1/MOCI	- Oman will have to re-define its interests under the WTO in light of its FTA commitments. - It will be in Oman's interests to join the GPA, so that even competition between all foreign suppliers including the U.S. will take place and benefit Oman's Government entities.
	1/MOCI	- It is unfair to see Oman's trade activities linked to the very strict FTA regulations on labour while other WTO members are exempted from such regulations. - Labour's costs will increase as a result of the FTA regulations. - Oman will always be under the risk of being accused by U.S. social groups of violating labour standards.
FTAs and WTO can be both fair and unfair systems	1/MNE	- The exploitations of developed countries of FTAs and WTO to only serve their interests at the expense of small economies are what make them unfair systems. - Both the WTO and FTAs can be potentially good and fair systems for small economies if their interests are considered. - The goodness and fairness of each FTA depend much on the capability of its parties to benefit from it. - The U.S. FTA is not fair for Oman because it does not recognise the economic differences between the two parties. - Oman could not benefit from the FTA because it has nothing substantial to export to the U.S.
Theme		The FTA is not fair for Oman's trade because it imposes additional obligations to its WTO commitments and does not recognise the big differences between Oman and the U.S. Oman must redefine its interests under the WTO in light of its FTA commitments.

Source: Compiled by the author (2009).

Table 8.3: Codified analysis of focus groups on the implications of the changes in the U.S. Administration on Oman-U.S. FTA

Category	**The implications of changes in the U.S. Administration on Oman-U.S. FTA**	
Focused coding		
	No/FG	**The views**
FTAs would have continued to revive under a Republican Administration.	1/MOCI 1/MNE	- If the Republican candidate, John McCain, had taken over the U.S. Presidency, more U.S. enthusiasm towards FTAs would have been witnessed. - The U.S would rehabilitate FTAs negotiations with GCC countries individually. - The MEFTA project would move forward. - The U.S. would be motivated to implement Oman-U.S. FTA to demonstrate to other MEFTA candidates the success of its model of FTAs.
U.S. enthusiasm towards FTAs will decline under the Democrats Administration.	1/MOCI 1/MNE	- There will be less enthusiasm towards FTAs under Barack Obama's Presidency. - The MEFTA project will vanish. - More efforts will be made to revive the Doha negotiations. - As the U.S. policy will be moving more towards multilateralism, less attention will be given to Oman-U.S. FTA.
	1/MOCI	- Under the Democrats' Presidency, Oman-U.S. FTA could only be used as a political gesture that would be referred to in some occasions, without having direct effects on trade activities between the two countries.
Global developments will determine the U.S. drift towards either bilateralism or multilateralism	1/MOCI	- U.S. enthusiasm towards FTAs or WTO will be determined more by the success of Doha negotiations and the readiness of other influential players such as the EU, Japan, India, Brazil, and China to move the multilateral negotiations forward.
	1/MOCI	- Many Democrats do not support FTAs not because they do not like bilateral trade agreements or favour multilateralism, but because these FTAs do not include enough strict measures on labour and environmental issues. - As recent FTAs such as the one with Oman have included such measures, some Democrats have started to show stronger support to them. - If it is continued to be difficult to incorporate such measures in the WTO system, Democrats will support the bilateral routes.
Oman-U.S. FTA will not be affected by the trade policy of the new President	Others MOCI MNE	- Changes in the U.S. Presidency will not affect the implementation of Oman-U.S. FTA. - The FTA was already signed and ratified and will be put into practice.
Theme	Although the new U.S. Administration may favour the MTS, the success of the Doha negotiations will determine the continuity of the U.S. support to the MTS. The trade policy of the new U.S. Administration may or may not affect the implementation of the already signed Oman-U.S. FTA.	

Source: Compiled by the author (2009).

Table 8.4: Codified analysis of focus groups on how Oman can overcome its problems in light of its commitments in the WTO and the FTA

Category		**Oman's best strategy to overcome the challenges facing its trade in light of its involvements in the WTO and the FTA**
Focused coding		
	No/FG	**The views**
First: focusing on specific competitive sectors	Some/ MOCI MNE	- Oman should seek to develop sectors in which it has competitive advantages such as tourism, fisheries, oil, gas, petrochemicals, and mining. - Oman should regularly assess challenges facing each sector.
	1/MOCI	- Oman should develop special branding for Omani products.
	1/MOCI	- Oman can exploit the advantages of its: strategic location, stable political and security systems, and strong adherence to economic liberalism, to develop a strong industry in IT.
	1/MNE	- Most of Oman's recent projects that come under its diversification objectives are oil and gas based industries. - Oman should continue establishing and developing similar projects, as part of its diversification plans.
Second: Identifying the best trading partners	Most/ MOCI MNE	- Due to geographical, cultural, and economic factors, countries such as: UAE, Qatar, Iran, India, Thailand, and China are important partners for Oman to intensify its trade and investments with.
	2/MOCI	- Due to their substantial cash flow, the UAE and Qatar are the most important strategic partners for Oman. - Oman should take an advantage of the GCC Economic Agreement to enter in mutual investment projects with the UAE and Qatar especially in the oil and gas sectors.
	1/MNE	- The UAE and Qatar may not be inclined to enter in too many investment projects with Oman. They have their own policies that favour international players rather than regional ones.
Third: Oman's negotiating stand in the WTO should serve the overall economic objectives	3/MOCI	- Oman's negotiating stand in Doha Round should be in tandem with its economic strategy and objectives. - Thorough assessments should be made on WTO regulations that affect the sectors on which Oman bases its strategy such as oil, gas, petrochemicals, mining, fisheries, and tourism. - Oman should study proposals of other members on these sectors and adopt its own negotiating stand.
	1/MOCI	- Oman should co-ordinate negotiating stands with India and China due to their increasing activities with Oman and their growing strength in the WTO.
	1/MOCI	- Oman should co-ordinate with GCC members in the WTO negotiations particularly in relations to sectors such as oil, gas, petrochemicals, and mining. - GCC exports of these products suffer from high protective measures in the developed world. - It will be in their interests to lobby against these measures and call for their liberalisation.
	2/MNE	- WTO will not help Oman achieve its economic strategy. - Oman could achieve its objectives by focusing on entering into FTAs with China, India, and South Korea as they are the most important trading partners to Oman. - These FTAs should not be as comprehensive as the U.S. FTA and should only focus on certain sectors that of Oman's interest such oil and gas industries.

	1/MNE	- Oman will automatically be a preferential trading partner to these countries via GCC FTAs with them.
	1/MOCI	- If Oman wants to benefit from trade arrangements and understand their dispute settlements, it will have to establish serious education and training programmes for Omanis, either as trade negotiators or as economic analysts.
	1/MNE	- When negotiating FTAs or making business deals with big economies such as China, India, Japan, and South Korea, Oman should ask for special training assistance for its citizens.
Theme	The challenges facing Oman's trade can be overcome by adopting a strategy that seeks to: a) develop sectors in which Oman has strong competitive advantages, b) intensify trade and investment activities in these sectors with specific regional trade partners, c) utilise the multilateral negotiations to serve Oman's interests in these sectors, and d) adopt comprehensive education and training programmes for Omanis to work in these sectors and specialise in trade negotiations and analysis.	

Source: Compiled by the author (2009)

Table 8.5: Codified analysis of focus groups on Oman's trade relations with China

Category		**Oman's trade relations with China**
Focused coding		
	No/FG	**The views**
How important is trade with China in achieving Oman's economic strategy and objectives?	Most/ MOCI+ MNE	- China is one of the most important trading partners that Oman should enhance its trade and investment with, especially in energy sectors.
	1/MOCI	- Oman and other GCC countries should utilise their currently negotiated FTA with China to increase their trade and investment cooperation with China. - Through these cooperation China's involvement in the security of the region will be locked-in.
	1/MOCI	- Oman has already realised the importance of China and the last few years witnessed increasing Chinese investment in the energy sector of Oman.
	1/MOCI	- Oman has been part of the overall Chinese ambitions to secure energy supplies. - The Chinese CNPC has established the joint venture "Daleel Petroleum Company" with MB Holding Company to operate Block 5. - Oman should encourage more Chinese investments to diversify the list of foreign investors in its energy sector away from Shell.
How can Oman learn from the Chinese experience to overcome its energy problems?	1/MNE	- It is difficult for Oman to imitate the Chinese global investments experiences in the energy sector because Oman does not entertain the same economic, financial, and military strength as China.
	1/MNE	- Oman can learn good lessons from the Chinese experience. - Oman's energy problems necessitate adopting intensive exploration and investment programmes. - Like China, Oman can seek to secure energy supply by owning oil and gas wells in countries with which it enjoys good political relations such as Sudan, Yemen, Iran, and Kazakhstan. - Oman can import crude oil and gas produced from its owned external wells and refine/liquefy them in Oman for local consumption or external exports.
How can Oman learn and benefit from China's investment in Africa?	3/MOCI	- Oman is discouraged from investing in Africa due to political and security unrest and bad human rights records. - But, China has the need, the will, and the strength to invest and safeguard its investments in Africa. - Human rights issues do not seem to concern China.
	1/MNE	- China's ambitions of owning and controlling oil and gas wells may entail imperialistic objectives that go beyond securing energy supply.
	1/MOCI	- Oman can utilise the advantages of its geographical proximity, historical presences, and cultural influence to invest in the energy sectors in Africa, particularly Eastern Africa. - Oman can enter in joint ventures with Chinese or other foreign companies investing in oil and gas explorations and productions in Africa. - Oman has the financial and professional capacity to invest in oil and gas sectors in Africa.

	1/MNE	- Africa could be Oman's sources for oil and gas supplies in the future. - The Port of Salalah could become a hub to transfer shipments of crude oil and gas from Africa to Oman and from Oman to the outside world.
	1/MNE	- The Port of Salalah can play an important role in improving Oman's export and trade relations with Africa with minimum transportation costs. - But, the Port is not fully utilised. - Many planned projects in the free trade area adjacent to the Port have been hampered by lack of gas and power. - An oil refinery can be established in the free trade zone adjacent to the Port to utilise some imported oil from Africa for the industries intended to be established in the zone.
Theme	China is an important trading partner for Oman. Increasing trading and investment activities with China, particularly in energy sectors can be a key factor in overcoming Oman's energy difficulties. Africa provides good opportunities for Oman. With better utilisation of the Port of Salalah, these opportunities can be better taken advantages of.	

Source: Compiled by the author (2009).

Table 8.6: Codified analysis of focus groups on Oman's trade relations with Iran

Category		**Oman's trade relations with Iran**
Focused coding		
	No/FO	**The views**
Political factors obstructed Oman-Iran trade relations	Common/ MOCI+MNE	- Iran is potentially an important trading partner, but this potential is not utilised due to Iran's problems with the West.
	1/MOCI	- Oman's trading activities with Iran are very low and do not reflect their geographical proximity.
	1/MOCI	- Iranian products are expensive in Oman, because they are imported via the UAE.
	1/MOCI	- Oman has sought to maintain a balance between its pro-Western policy and relations with Iran. - This balance has prevented Oman from getting involved in too many long term investment projects with Iran.
	1/MOCI	- Despite the geopolitical obstacles, the economic cooperation between Oman and Iran has improved in the last few years. - Oman and Iran have been negotiating gas deals whereby Iran will supply Oman with gas at an agreed price. - The two countries intend to enter in mutual projects in shipbuilding, tourism, and medicine. - The two countries are determined to utilise their good political relations to serve their economic interests.
	1/MOCI	- In order for Oman to enhance its trade relations with Iran, it would have to open direct sea and air flights with Iran, so that smooth movement of goods and people between the two countries can be ensured.
	1/MOCI	- The will of Iran to enter into strategic economic projects with Oman is questionable. - Iran may drag negotiations with Oman over the gas issue for too long, so that Oman will continue its strong opposition against any possible U.S. attacks on Iran.
	1/MNE	- The geopolitical factors in the region will determine the future of Oman-Iran trade and economic cooperation. - Improvement in trade relations between the two countries is subject to changes in the political thinking of Iran and U.S. Administration. - Only if the U.S. and Iran accepted each other as friends, Oman could count on Iran as an important strategic trading partner.
Will Iran's accession to the WTO help improve its trading activities with Oman?	1/MOCI	- Iran's accessions to the WTO will encourage Oman to intensify trading activities with it. - Much of the tariff and non-tariff barriers imposed by Iran will be removed. - Oman's exports will be treated equally with Iran and other foreign products.
	1/MOCI	- Iran's membership of the WTO will help it integrate in the global economy and achieve more stability in the region.
	1/MOCI	- Iran's membership of the WTO will reflect the consent of the U.S. and EU to integrate Iran into the world economy. - This will in turn encourage Oman to improve its trade relations with Iran.

	1/MOCI	- Iran's membership of the WTO will provide Oman with the assurance that any trade dispute with Iran can be resolved through the dispute settlement of the WTO.
	1/MNE	- Oman should not place much hope on Iran's accession to the WTO because it is not an easy process.
	1/MNE	- Iran's WTO membership will be directly linked to its current problems with the West. - Unless Iran reached an agreement with the U.S. over its nuclear programme, Iran's WTO negotiations will be made very complicated and long. - The U.S. has for long objected to Iran's application to the WTO and will complicate things for Iran to join the WTO.
	1/MNE	- Joining the WTO has become a very difficult process as new members are required to make far more commitments than old members. - It is doubtful that Iran will be ready to make many liberalisation commitments, as it has been always a close economy with high level of tariff and non-tariff barriers.
The project of Iran-GCC FTA	4/MOCI	- An FTA with Iran will lead to trade liberalisation and allow for more economic integration between the GCC and Iran.
	1/MOCI	- The seriousness of Iran to negotiate an FTA with the GCC is questionable. - Although President Mahmood Najad proposed to establish an economic pact and negotiate an FTA with the GCC, nothing substantial is made to implement the proposal.
	2/MNE	- Najad's GCC-Iran FTA proposal is no more than tactical moves to improve the political relations with the GCC. - Whether Iran will be serious to carry out its proposal depend much on the political developments and how the U.S.-Iranian tensions develop.
Would Iran-WTO negotiations hamper the proposed Iran-GCC FTA? Which of the two approaches would be better for the GCC?	1/MOCI	- GCC countries could negotiate and sign an FTA with Iran without being concerned about Iran-WTO negotiations. - An FTA with Iran would give GCC products and businesses favourable treatment in the Iranian market that other foreign products would not enjoy.
	1/MOCI	- The GCC-Iran FTA would complicate Iran's negotiations with the WTO. - Iran would be asked to offer other WTO members with similar treatment provided to the GCC.
	Many/MNE	- Iran's invitations to the GCC to negotiate an FTA and its applications for the WTO membership are no more than political moves to lift it from its current isolation.
	1/MNE	- Geopolitical factors will determine the outcome of any GCC-Iran FTA negotiations. - These factors are not only about the U.S.-Iran tensions but also about Iran-GCC countries relations. - Iran has political tensions with the UAE and Bahrain which can obstruct successful GCC-Iran FTA negotiations.
Theme	Iran is potentially an important trading partner for Oman, but this potential has not been utilised due to political factors related to Iran's conflict with the West. Geopolitical factors will determine: the future of Oman-Iran trade relations, the success of the currently negotiated mutual projects between them, Iran's membership to the WTO, and Iran-GCC FTA project.	

Source: Compiled by the author (2009)

Table 8.7: Codified analysis of focus groups' discussions on Oman's trade with India

Category		**Oman's trade relations with India**
Focused coding		
	No/FG	**The views**
Oman's trade activities with India are modest	Common/ MOCI MNE	- The big Indian consuming market, its open economic policies, privatisation programmes, and geographical proximity should encourage Oman to enhance trade activities with India. But, such activities have been very low.
	1/MOCI	- Although Oman's total imports and exports with India have increased in recent years, India is still not amongst the biggest trading partners with Oman.
	1/MOCI	- Oman and India should take an advantage of being members to the Indian-Ocean Rim (IOR-ARC) to increase trade between them.
	1/MOCI	- Oman should establish a trading strategy with India based on branded products with distinguished quality and taste.
	1/MOCI	- Oman can exploit the daily flights to India and historical and cultural ties to promote Omani products in India. - Omani businesses can learn from the big Indian community in Oman about the types of products, segments, and local markets which they should target in India and the best marketing methods to do that.
	1/MOCI	- Despite its diversity, the Indian market is much protected with many invisible bureaucratic obstacles against investors.
	1/MOCI	- Oman and India should have the incentives to increase mutual trading and investment activities, beyond the merchandise goods. - The growing economy of India provides good investment opportunities for Omani companies. - Omani companies can enter in joint venture with Indian companies in oil, gas petrochemicals, pharmaceuticals, banking, manufacturing, and insurance. - Oman's open policies and privatisation programmes should also attract Indian companies to invest in Oman.
	1/MOCI	- The last few years witnessed increasing investment activities between Oman and India such as the Oman-India Fertiliser Company (OIFC) and the state Bank of India established in Oman.
	1/MOCI	- Governments of Oman and India are working towards establishing a joint holding company to invest in infrastructure, tourism, and energy.
	1/MOCI	- Oman could benefit from India in education and training particularly in IT.
	1/MNE	- Oman should not only focus on increasing exports to India, but should also facilitate the entry of Indian products to its markets.
	1/MOCI	- Many Indian products enter Oman via the UAE, which makes them more expensive. - Oman should encourage more direct imports from India.
Ways of enhancing trade with India; multilateral or bilateral trade	1/MOCI	- Unless the two countries sincerely believe in the benefits of enhancing their trade activities, neither the WTO nor the FTA could be of a much help.
	1/MNE	- The FTA could be a better tool to enhance trade between Oman and India than the WTO.

approach?		- Under the WTO, India receives the same treatment in the Omani market as other trading partners. - Under the FTA, India will enjoy special treatment in Oman's market that is not extended to other countries, which should encourage India to increase its trade and investment activities with Oman. - Omani businesses will enjoy similar preferential treatment in the Indian market.
	1/MOCI	- India is an important player in the WTO negotiations. - Oman shares similar interests with India and should coordinate its negotiating agenda with it.
	2/MOCI	- Not all India's agenda at the WTO suites Oman's interests. - India has been lobbying developed countries to liberalise agriculture, which does not help Oman as a net-food importing country. - If such liberalisation is achieved, the price of food will increase substantially.
	1/MOCI	- Being net-food importing countries, Oman and its GCC partners should address their concerns at both the WTO and FTA negotiations with India and ask for special considerations.
	1/MOCI	- Oman can benefit from India's experience in the WTO to train Omanis to gain the required skills for negotiations. - Oman could seek India's advice about the best negotiating position that Oman should undertake in the current Doha negotiations.
	1/MOCI	- Oman could benefit from India's experience in the dispute settlement in the WTO.
Theme	Oman's trade relations with India are still modest and do not reflect the importance of India as a growing economy. It is in the interests of Oman to increase its trading and investment activities with India. Oman can learn and benefit from India's long experience in the WTO.	

Source: Compiled by the author (2009).

CHAPTER NINE: CONCLUSION

9.1. Introduction

By officially joining the WTO in 2000 and signing the FTA with the U.S. in 2006, Oman is a member of two different, and arguably contradictory, trading approaches. Whereas the WTO is based on the non-discriminatory principles of the MFN and national treatment, the FTA is based on discrimination and preference. The thesis has examined Oman's position under each approach and found that the mutliateral WTO approach provides more flexible, comprehensive, and comprehensible legal arrangements than the FTA and that Oman faces better policy choices under the WTO than the FTA. Whereas, under the WTO, there is a greater scope for Oman to address its concerns and associate its position in the on-going Doha Round with other members of similar interests, such opportunities do not exist in the FTA. The in-depth analysis of this research on Oman's involvement in the two trading approaches, as explored in the empirical chapters, has backed up these main findings of the thesis. This chapter discusses the overall findings on Oman's membership of the WTO and the FTA. This is followed by providing some recommendations for the trade policy-making and decision-making process in Oman, outlining the future directions of research in this field, and indicating the main limitations on the research.

9.2. Joining the WTO: a difficult task that required much preparation

Until 2000, Oman was not a member to the WTO. Different explanations were provided in the semi-structured interviews for such a late step, but what really matters most is the fact that Oman had understood the importance of joining the WTO and prepared itself for meeting its requirements. Perhaps, joining the WTO was the most important step undertaken in regard of Oman's interaction with the global trade at the time. It meant that Oman would have to relinquish much of its sovereignty to a wider international organisation. This relinquishment would be greater than those countries which had already joined the WTO before Oman. Thus, Oman prepared itself for the negotiations by following Uruguay Round, being an "observer" to the WTO for one year (April 1995 – April 1996), conducting assessment studies on the WTO, and leaning from the experiences of other countries. These preparatory steps proved, as revealed in the semi-structured interviews, very helpful to make the Omani negotiators aware of the nature of the WTO regulations, the kinds of commitments they should easily agree to make and the commitments they should endavour not to make. Nevertheless, WTO negotiations proved to be very tough and long as they lasted around three years. The U.S., in

particular, was the toughest and the last negotiator and used many different means to oblige Oman to make many commitments, particularly in services.

Some people accused the Omani team of being soft, unskillful, and inexperienced negotiators, which was reflected in making far too many commitments than other countries. However, those who experienced the negotiations felt that they had achieved the best they could, although they admit that they were not as skillful or experienced as the WTO negotiating team. In some areas, they felt that they came up with important useful commitments for Oman. These included the 80 percent Omanisation of work-force in any business providing services in Oman, the very high tariffs in areas where Omani products could be affected by imports such as dates, lemon, and bananas, or where products are regarded as socially and religiously sensitive such as alcohol, pork related meat, and cigarettes. Omani negotiators also felt satisfied that they were able to overcome the pressures of the U.S. and the EU and stay out of the Government Procurement Agreement (GPA) of the WTO. They tactfully managed to take an advantage of the pluralistic nature of this agreement and convince the WTO negotiating party that Oman would undertake the status of an "observer" and would start negotiations to be a member to the GPA after one year of accessions, a promise that has never been fulfilled until the time of writing this thesis.

After this tough negotiating experience, Oman became an official member to the WTO and endavoured to reform its domestic regulations to match those of the WTO. A national committee consisting of employees from different ministries and Government departments was established to follow up developments at the WTO and advise the Government on the development of the Doha Round negotiations and the best position to undertake in regard with these negotiations. Also, in order to make the Omani people, particularly the business community, aware of the WTO commitments, the opportunities available and challenges expected, different presentations around the country were given. Up to this point, and despite the limitations of resources and employees, the Government made substantial efforts to situate itself in the WTO and meet its requirements. However, this did not mean that every thing was perfect. The roles of the academia, Majlis Al-Shura, and business community were neglected from debating and discussing the issue before and during the WTO negotiations; a lapse that was to be repeated in the process of negotiating the U.S. FTA.

9.3. Limited resources and low level of interaction

Unfortunately, however, since November 2000, Oman's interaction with the multilateral trading system has remained very modest and has not reflected the immense efforts that were made before joining the Organization. The national committee that was assigned to follow up the developments of the WTO only held a very few meetings. Even some of those who were involved in the committee left their Government positions to work for the private sector. Only one person was employed to represent Oman in the WTO headquarter in Geneva, attend all the meetings and different events in the Organization, follow-up the negotiations on many issues and sectors, and write regular reports to the MOCI in Muscat; an immense task indeed. There is hardly any research conducted on Oman's position in the WTO and how Oman could utilise its membership to the WTO in a way that would serve its trade interests. These findings give some credit to the views of those who argue that the ultimate objective behind seeking the WTO membership was to be an official member to the Organization and no more than that.

Also, the lack of awareness of some Government officials dealing with trade issues, academics, and business people, about Oman's commitments and its rights in the WTO, the opportunities available and challenges ahead is another important finding of this research. Although the MOCI felt that it did its part to make the society aware of Oman's membership to the WTO, other interviewees accused the MOCI of not making enough and consistent effort. Irrespective of which of these views is more accurate, the ultimate reality remains that important elements of the society, and the business community in particular, is still far behind from realising the opportunities provided to them by the WTO. The limited interaction with the WTO, after being an official member, has played its role in this absenteeism of the business community. Hence, as the vivacious activities witnessed before joining the WTO have dramatically declined afterwards, no wonder then why some interviewees from different spectrum: business, academia, and Government, did not seem to appreciate the importance of the WTO for Oman's trading activities. Some of them went as far as describing the WTO as an imperialistic institution. Many others felt that it was difficult to link the revival of the economy of Oman to the WTO membership. For them, the main reasons for this revival had been the continuous increase in the price of oil and gas in international markets.

Both the business community and policy makers in Oman ought to realise that there is much to achieve and cultivate from the WTO membership. The latter provides appropriate conditions for the realisation of diversification of sources of income, which is one of the main objectives of Oman Vision 2020. Oman's exports would be treated in a non-discriminatory manner in 152

markets. In cases of disputes, Oman's rights could be protected by the well-established dispute settlement of the WTO. Oman could request for special assistance from WTO to learn more about the dispute settlement. All WTO members were committed to open their services, although to various levels, and Omani businesses could intensify their activities with countries where they could have better opportunities to compete. But, there is much work needed to be done for these opportunities to be explored and taken advantages of.

9.4. Pursuing bilateralism

With all these circumstances in place, and having experienced the MTS membership for only a few years, with limited interaction and resources dedicated to follow up development at the Doha Round, and with the lack of experienced negotiators, Oman indulged itself into a new dilemma of trade arrangements by negotiating an FTA with the most powerful economy in the world.[1] Despite the comments made by officials from the two countries that the FTA would enhance Oman's exports to the U.S. and would help it diversify its sources of income, the ultimate findings of this thesis are that this FTA was more politically, rather than economically, driven agreement and that it would not help Oman's position in the WTO but it would rather complicate it. Oman faces better policy choices under the WTO than the FTA. Both Oman and the U.S. had their own non-economic agenda behind negotiating and signing the FTA that goes beyond the pronounced enhancement of trade activities. However, the actual impact of the FTA on Oman's trade will remain to be seen after some few years from now and it is left for future researches to determine that.

9.4.1. U.S. agenda behind the FTA

As is the case with the FTAs with Jordan and Morocco, the U.S. hopes to achieve different objectives from its FTA with Oman. Among these objectives is that the FTA would serve as another step towards achieving the MEFTA project and perhaps would act as a foreign policy tool to recognise, or perhaps reward, Oman for being a pro-U.S. partner (see Chapter Three). However, although the FTA has been signed and already put into force, the two objectives have not been achieved. Firstly, the MEFTA project that was announced by President George Bush to be completed by 2013 has turned out to be too ambitious and stumbled in difficulties. Apart from the five countries -- Israel, Jordan, Morocco, Bahrain, and Oman -- that the U.S. has officially signed FTAs with, negotiations with others such as the UAE and Egypt have frozen, and with many others have not even started. Also, it is unfair to accord the FTAs with

[1] Appendix 7.1 provides chronological background on Oman's involvement in the multilateral and bilateral trade approaches starting from 1995 until 2009.

Israel and Jordan to the Administration of George Bush. Although they were made part of the Bush's MEFTA project, the FTA with Israel was signed much before his era, and the Jordan FTA was fully negotiated during his predecessor's time, Bill Clinton.

President Bush's Administration exploited the 9/11 events and linked the U.S. strategy of fighting terrorism to trade. Bush's objective was to get the Congress to agree to guarantee his Administration with the trade promotion authority (TPA) through which he could directly negotiate FTAs with other countries. He succeeded in that and the MEFTA project was launched with Bush's ambitions to sign FTAs with all MEFTA countries by 2013. However, things have changed dramatically in the U.S. politics since 9/11. New Congressmen and women were appointed from the Democrats who have refused to renew the TPA beyond June 30, 2007. The argument of fighting terrorism via trade was no longer effective enough to convince the Congress to renew the TPA. Bush himself had to leave the White House and the MEFTA project does not seem to be moving any forward.

Some participants in the discussions of MOCI focus group suggested that the MEFTA project could have had some hopes to revive if John McCain hade made it to the White House, as he would be continuing Bush's trade policy. But, this has not happened. The U.S. Administration is now governed by President Barack Obama and much optimism is made that he would pursue a more multilateral trade approach and would seek to revive the Doha Round negotiations. As the Congress is now dominated by the Democrats, President Obama may be able to obtain the Congress approval to guarantee his Administration with the TPA which may make the task of reviving the multilateral negotiations of the Doha Round more effectively carried out. However, if the Doha negotiations have continued to face great difficulties, Obama's trade policy may shift to the bilateral FTAs approach, as was the case with his predecessors; Clinton and Bush. If such deviations took place, issues of interests to the Democrats such as labour and environment may witness further enhancement in the FTAs.

However, until that happens, the ill-fated MEFTA project ultimately meant that amongst the GCC countries only Oman and Bahrain are committed to the U.S. FTAs. The two FTAs created tensions within the GCC family for contradicting Articles (2) and (31) of the Economic Agreement. Even though this tension was somehow eased by exempting the U.S. FTAs from the requirements of Articles (2) and (31), Oman and Bahrain must live up with the reality that their trading activities are subject to different trade agreements than the rest of the GCC members. All GCC countries are collectively committed to abide by the Economic Agreement.

They are all members to the WTO whose regulations apply to all of them. Also, they have been collectively negotiating FTAs with the EU, China, Australia, India, and other economies. Once signed, they will all have to abide by these FTAs. However, the U.S. FTAs have disturbed this GCC collectiveness and, as demonstrated in some interviews, have made their cooperative negotiations with other economies more difficult. The EU has been asking the GCC to provide it with no less favourable treatment than what is guaranteed to the U.S. in its FTAs with Oman and Bahrain. Thus, matters have become very complex in regard to the EU-GCC FTA negotiations.

Secondly, the U.S. uses complimentary tactics to support its endavour to negotiate and sign FTAs with other countries, as Chapter Three and the subsequent reviews on the U.S. FTAs with Morocco and Jordan (Appendices 3.3 and 3.4) have demonstrated. Oman was not an exception and was complimented by U.S. officials for its pro-U.S. foreign policy during and after the FTA negotiations. The FTA was presented as a reflection of Oman-U.S. special relationship. This is clearly demonstrated in a message sent on June 26, 2006 from President George Bush to the U.S. Congress, which stated that the FTA with Oman *enhances our bilateral relationship with a strategic friend and ally in the Middle East region*. Similarly, U.S. Department of Defence (cited in the National U.S.- Arab Chamber of Commerce - NUSACC, 2006d, p.8) stated that; *Oman has been a coalition partner for over thirty years. Oman's active participation during the Gulf crisis and their willingness to allow access to port facilities and air bases make them vital to any coalition success in the region.*

However, ironically, rather than rewarding Oman for its pro-U.S. foreign policy, the FTA applies expensive burdens on Oman. As the textual/codified analyses of chapters five and six have demonstrated, the FTA is far more complex and imposes additional commitments on Oman than the WTO. The special relationship with the U.S. has not exempted Oman from the very strict obligations and additional commitments of the FTA. New areas, in which developing countries have consistently refused to include in the ambit of the WTO such as government procurement and labour and environmental standards, are made part and parcel of the FTA and Oman would inescapably have to abide by them. This does not mean that the researcher is against implementing strict labour and environmental measures. But, incorporating them in the FTA is what the researcher is arguing against. These are non-trade issues and, as consistently argued by Bhagwati (2001a,b) and reflected in the views of some interviewees, should not be included in trade agreements. There are other international institutions dealing with them such as the ILO. Oman had been abiding by their regulations

without the need for the FTA. Their inclusion in the FTA means that they are interlinked with all other chapters of the Agreement. They will be subject to the same, but even harsher, dispute settlement mechanism. Oman's exports to the U.S. could be deprived from entering the U.S. markets on the ground that they are produced by "oppressed labours". This view might sound radical, but it is not. Oman was heavily accused by different U.S. interests groups of oppressing labours and depriving them from their basic rights, to the extent that these groups stood against signing the FTA with Oman. Such criticism could continue even after the implementation of the FTA and could have negative consequences on any Oman's trading activities with the U.S.

Other areas of the FTA where multilateral negotiations are still continuing and where Oman under the WTO still has the opportunity to express its concerns, such as rules of origin, constitute very long and detailed chapters of the FTA. Even those areas such as market access, services, telecommunications, and dispute settlement, where multilateral regulations are robust, the FTA made them far more complicated than in the WTO. Moreover, the GATS adopted the positive-list approach whereby WTO members are only obliged to liberalise services that are listed in their schedules of commitments; i.e. other non-included services would not be subject to the GATS regulations. However, the FTA has inflexibly adopted the negative-list approach, which means that all types of services are liberalised and subject to the FTA regulations, except those services which are specifically listed in the annexes to the Agreement. Hence if Oman, by one way or another, has not included some services in the annexes, as is the case of gambling, they automatically become subject to the FTA regulations.

Furthermore, what was once described by the Omani negotiating team in the WTO as major achievements came about after difficult negotiations, and these have been lost in the FTA. Oman's entitlement under the WTO to raise tariffs against certain imports from other countries to protect its national products is wiped out in the FTA, as all tariffs will have to go down to zero. Oman's domestic products will have no protective shield against competition from the well-established and branded U.S. exports. Even those products which are described as socially and religiously sensitive such as pork related meats, alcohol, and cigarettes where Oman is entitled under the WTO to apply very high level of tariffs, will also have to be reduced to zero after nine years of the FTA implementation. Moreover, although Oman managed to escape from being a party to the GPA under the WTO and postponed its promised negotiations to this Agreement, the FTA has left no choice for Oman but to commit it to a very detailed and strict chapter on the GP. The condition of the 80 percent Omanisation of the total workforce

achieved in the WTO has also been substantially eroded in the FTA, as this condition will not apply to employees at senior levels.

Because of all these reasons, the FTA contains no reward but only much stricter obligations that Oman had to abide by. These obligations mainly aim to force Oman to open its markets in a way that is suitable for U.S. businesses and products. Omani products and companies will have to compete with their powerful U.S. counterparts on equal footing. If they prove unable to do so, they will be driven out of business. The Government economic plans to help promoting national industries will face major difficulties as they would seem to be contradicting with the non-discriminatory principles of the FTA.

9.4.2. The differences of the non-discriminatory principles between the WTO and the FTA

Some people might argue that the non-discriminatory principles are also the basis of the WTO functions and thus, under the two trading approaches Oman would not have the policy choices of protecting or promoting national industries. Although the MTS is based on non-discrimination, its legal implications are more suited for the small economy of Oman than the FTA, because of the following reasons. Firstly, in the WTO, Oman is one of 153 members. Scrutiny on its national trade policy and implementations of the WTO requirements is quite relaxed. This wide membership and the flexible scrutiny have allowed Oman to continue pursuing its interests of promoting national industries. Perhaps a good example of that is Omantel, which has been established, owned, and developed by the Government. Under the WTO, Oman is obliged to liberalise the telecom sector from January 1 2005, but this liberalisation has been pursued gradually and very cautiously, without experiencing much pressures from the WTO.

Until the present time, only few important steps have been taken by the Government in this regard. The first is authorising a foreign based investment, Nawras, to be the second mobile service provider. All other telecom services are still monopolised by Omantel. The second is establishing the Telecommunications Regulatory Authority (TRA), as an independent regulatory body separate from any telecom supplier. The third is privatising 30 percent of Omantel via the Muscat Securities Market. The fourth is the recent award of a new license to Nawras to set a second fixed line network. This should not be understood that Oman has been escaping from implementing its commitments in the WTO, nor should it imply that the researcher is against liberalising the telecom market of Oman. But, it ultimately means that membership to the WTO has provided Oman with the flexible policy choice of pursuing such

liberalisation in an incremental way that matches its economic plans and serves its interests. However, such relaxations will not be permitted in the FTA whose chapter on telecommunications, as elaborated in the textual and codified analyses of chapter six, is much stricter, more detailed, and contains more commitments than the WTO. As is explored in the semi-structured interviews, the U.S. has already put pressures on Oman to further privatise its telecom sector, reduce the Government influence, and make the TRA more independent from the Government. It is expected that such pressures will increase after the implementation of the FTA.

Secondly, in the WTO, the non-discriminatory principles do not apply to government procurement, as Oman is still not a party to the GPA, but they do apply to the GP chapter of the FTA. This means that while under the WTO, Oman could use the tool of GP to promote its national industries, it cannot do so in the FTA. Thirdly, as is elaborated above, in the FTA, the non-discriminatory principles will apply to all types of goods including those socially and religiously sensitive ones such as alcohol, pork meats, and cigarettes. Under the WTO, however, Oman is entitled to protect many of its products such as lemon, banana, eggs, dates, and petrochemicals, by imposing tariffs of different levels. Oman could also apply very high tariffs against imports of alcohol (200%), cigarettes (150%), pork related meats (200%). Fourthly, WTO regulations contain more flexible provisions for developing countries and provide them with special technical assistance. But, in the FTA no such consideration is given. Oman is treated on equal footing with the U.S. despite the substantial differences in their economic capabilities. Fifthly, Oman's position in the WTO as a developing country is much stronger than the FTA. Developing countries constitute around two third of the total members to the WTO and they have become much stronger and more influential in the MTS. Oman could address its issues of concerns and interests and pursue them in collaboration with other developing countries with similar interests. The Committee on Trade and Development (CTD), which is tasked to address the concerns of developing countries, and small economies in particular, and provide them with the necessary assistance, could be of a great help to Oman.

Hence, while the FTA obliges Oman to fully open its economy on U.S. based regulations, it has nothing to offer to Oman and its businesses in return. Findings of the semi-structured interviews and the focus groups in earlier chapters support this view. Because of the above-mentioned reasons, along with the very low level of trade, the substantial differences in the economic performance, and the remote geographical distance between the two countries, the researcher is bound to argue that the FTA entails little economic benefits, if any, for Oman.

This argument further finds enough support in the words of the previous USTR, Robert Zoellick in his statement before the Committee on Finance of the U.S. Senate in 2001, when he stated that the U.S. seeks to open markets of its FTAs partners more than providing them with special treatment in the U.S. market.

> Given the size of the U.S. economy – and the reach, creativity, and influence of our private sector – we should be and can be shaping the rules of the international economic system for the new century. American openness is high and our trade barriers are low, so when we negotiate free trade agreements with our counterparts we almost always open other markets more than we must change our own (Zoellick, 2001b).

9.4.3. Oman's agenda behind the FTA

Oman, in return, had its own political agenda behind the FTA with the U.S. The thesis has determined that politics, rather than economics, was the main driving force for Oman's enthusiasm to sign the FTA. The FTA would further enhance Oman as a strategic partner to the U.S. with whom it has sought all means to maintain strong relations. The FTA would be another tool of cooperation between the two countries besides the security facilities that are provided by Oman for the U.S. military. It would consolidate the image of Oman as a distinguished U.S. ally (see Chapter Three). Besides participants' own opinions, the actions and steps undertaken by the Government before, during, and after the FTA negotiations justified Oman's political drive to sign the FTA.

As explored in the semi-structured interviews and focus groups, the whole negotiating process of the FTA was driven to be concluded within the shortest time possible, as if the whole objective was only to sign the FTA irrespective of its economic consequences. The TIFA, signed on July 7, 2004, was quickly turned into an FTA project. The TIFA was, in principle, supposed to act as a framework agreement via which both Oman and the U.S. would be able to discuss mutual investment prospects and cooperate with each other to promote and strengthen economic activities. In order to achieve these objectives, the U.S.-Oman Council on Trade and Investment was established. However, after about three months during which the Council held one meeting only, the two countries decided to enter into FTA negotiations. Rather than acting to achieve the above-mentioned objectives, it appears as if the TIFA was no more than a bureaucratic step that had to be taken to start the FTA negotiations. It is interesting to note that all other GCC countries had signed the U.S. TIFAs before Oman, which implies that they had longer time to utilise their TIFAs to discover the business opportunities available to them in the U.S. market and evaluate the extent to which they could go along with negotiating and signing the U.S. FTAs. Bahrain was the first country to sign the TIFA with the U.S. on June 18, 2002, followed by Kuwait on February 6, 2004, UAE on March 15, 2004, and Qatar and Saudi

Arabia on March 19, 2004 (USTR, TIFAs, 2004f). However, while all these countries still have not signed the U.S. FTAs, apart from Bahrain, Oman pushed its FTA negotiations with the U.S. very hard and concluded them within the very short period of seven months. Some officials in the MOCI described this as a "record achievement".

Unlike the situation in the WTO, the lack of preparations for the FTA negotiations was very apparent. Apart from studying the Bahrain-U.S. FTA, nothing much was done. Before the negotiations, no feasibility or assessment study whatsoever was conducted on the possible impact of the FTA on Oman's trading activities. The picture for many of those who were involved in the negotiations was very gloomy. The FTA itself was not even translated into Arabic which created a major obstacle for the legal experts who were supposed to provide legal advices to the negotiating teams. As a result, the whole workload fell onto the shoulder of the only legal expert who had English background. Another striking finding is that it is patently stated in the very end of chapter twenty two of the FTA (p.22-2) that the Agreement has been signed *in duplicate, in the English and Arabic languages* but this was not true. The semi-structured interviews clearly revealed that the FTA was only signed in English version. Although there has been more than three years since signing the FTA on January 19, 2006 and although the FTA has already entered into force, the FTA, until the time of writing this thesis, has still not been translated into Arabic.

Moreover, the experience of those who negotiated the FTA clearly reflected how they were not allowed enough time to prepare for the negotiations and how they were consistently urged to conclude the negotiations and avoid dragging them for long. Other important institutions; the academia, Majlis Al-Shura, Majlis Al-Dawla, and the business community were marginalised and not given the opportunity to comment, discuss, or debate the FTA before signing it. All of these results clearly demonstrate the political thrust to conclude the negotiations and sign the FTA in isolation of the economic consequences.

9.5. The FTA is a trade agreement in the end

Although it was politically driven, the FTA is a trade agreement in the end and will inescapably have some impact on Oman's trade. Oman will have to live up with this reality and prepare very well for it. The relaxations experienced under the WTO will not be entertained in the FTA. Oman has already started to experience the pressures of the U.S. even before the start of the implementation of the FTA. The U.S. insisted that Oman would have to reform all the relevant domestic laws and regulations so that they would be compatible with the FTA

regulations before its implementations; a complex process that took Oman around three years to complete. These reforms include laws on the intellectual property rights, telecommunications, banking, tender board, e-commerce, labour, and environment. The task was immense particularly when considering the fact that Oman was already involved in a similar process of reforming its domestic laws to match the WTO regulations. The same process had to be repeated under the FTA but in a wider context and under more pressure. As is evident from some of the interviews, the U.S. legal specialists were given the right of reviewing and commenting on these reforms in their draft forms. The special political relations did not exempt Oman from making these reforms. The remarks of the previous USTR, Robert Zoellick (cited in Evenett and Meier, 2008, p.40) are clear evidence of that.

> I'm trying to send a signal, which is that there are some countries in the world that had an old think and that feel that political relationships are going to give them what they want economically. And they won't. They've got to make the reform.

Some interviewees expressed their dissatisfactions about this process of having to reform domestic laws not only because it was long and complicated, but also because it was not agreed about from the beginning with the U.S. Oman attempted in the first place to avoid these U.S. pressures by stating in the Royal Decree no.109/2006 which ratified the FTA that *the provisions of this Agreement shall apply to issues that are included in it and any other laws that contradict with the provisions of the agreement shall not be applied to the Agreement.* Although this sentence patently indicates that the FTA supersedes any domestic law in Oman, it was not sufficient enough to exempt Oman from conducting the reforms of its domestic laws. The U.S. insisted that Oman would have to finish all the reforms of its domestic laws before putting the FTA into force. This undoubtedly made the MOCI in awkward position. The MOCI had endavoured to finalise the negotiations within short time but, once that was achieved and the FTA was officially signed, the FTA was not put into practice. The pride of concluding the negotiations within a very short period of time had been downgraded by the delay of the FTA implementation for around three years.

9.6. Recommendations

9.6.1. Escaping the consequences of the discrimination of the FTA: multilaterising the FTA

Oman's multilateral position will be weakened as a result of its WTO plus commitments in the FTA. This is because that Oman will be likely asked by other WTO members to extend to them some similar preferences that are guaranteed to the U.S. Thus, Oman will have to re-address its interests in the WTO in light of its commitments in the FTA. One way of achieving that is by

"multilateralising the FTA"; i.e. by extending the FTA preferences to all WTO members.[2] Thus, all WTO members would be able to compete in the Omani market on equal ground with the U.S. However, Oman would not be able to multilateralise the whole FTA regulations, as doing so would not be in the interests of all WTO members. Thus, Oman would have to adopt this policy very carefully and selectively as discussed below.

Firstly, as is already mentioned above, Oman, under the WTO, has avoided for so long being a party to the GPA as this would not serve its plans of promoting and developing national industries. However, as a result of the FTA where Oman agreed to open its GP market to U.S. bidders, such plans will be difficult to implement. Omani nationals will have to compete on equal footing with U.S. competitors. Not only that, the latter will entertain a very special preferential treatment in the Omani market that other foreign competitors will not entertain. This discriminatory and favourable treatment implicates that the Omani GP market could become monopolised by U.S. businesses. The competitiveness of other foreign companies will be placed at disadvantage as they will not enjoy the same preferential treatment provided to the U.S. Hence, in order to escape from this possible U.S. monopoly, Oman should seriously consider joining the GPA officially and make its commitments under the GPA very similar to those made in the FTA. By doing so, international competitors from other GPA parties such as the EU, Japan, and South Korea, will be able to compete freely against U.S. bidders for Oman's GP.

However, it is important to point out that although developed countries should be interested in Oman's approach to open its GP market at the multilateral level, they might not necessarily agree to incorporate the very detailed U.S. regulations of the GP chapter of the FTA in the ambit of the WTO. Thus, Oman would have to abide by the regulations of the GPA which are, as explored in the textual analysis, not identical with those of the FTA. This would ultimately mean that Oman would continuously remain subject to regulations of two different contradictory trading systems even after joining the GPA. Hence, the multilateralisation approach would never lead to full incorporations of the FTA regulations into the WTO legal system, but would at least seek to narrow the differences between them. Moreover, it would be in Oman's interests that other developing countries join the GPA; i.e. full multiateralisation of the pluralistic GPA. This is because Omani GP market would be fully open for competition from all WTO members and Omani businesses could compete in their markets, thus seeking investment outwards. However, this ambition might be quite idealistic due to the strong

[2] For similar views on multilateralising free trade agreements, see Rirchard Baldwin (2006).

rejection of developing countries to subject their GP to the WTO legal system, as a result of which the issue was dropped from the multilateral negotiations.

Secondly, a similar argument could be applied to telecommunications as well as many other services. As the textual and codified analyses demonstrate, under the FTA Oman is now committed to liberalise its telecom market on a wider scale than is the case under the WTO. Whereas Oman has been seeking to open this sector gradually under the WTO, the FTA will pressurise Oman to do so more speedily. As is the case in the GP, the U.S. telecom providers will entertain discriminatory favourable treatment that will enable them to dominate the Omani market over other foreign competitors who will not entertain a similar treatment. Because of that and because U.S. telecom providers enjoy more competitive advantages in this field due to its advanced technologies, the monopoly on the Omani telecom sector could shift from Omantel to U.S. telecom providers. In order to overcome this potential problem, Oman will inevitably have to expand its favourable treatment given to the U.S. to other foreign companies. Thus, the U.S. telecom companies will have then to compete on equal ground with the foreign companies. Therefore, Oman should multilateralise its FTA commitments in the current Doha Round where telecom services are part and parcel of the multilateral services negotiations. Oman could utilise this offer to benefit from multilateral negotiations in other areas by, for example, seeking to provide it with special considerations as a net-food importing country. This argument also applies to all other services and sectors in which the FTA guarantees the U.S. special favourable treatment such as in financial services and insurance.

However, once again, while other WTO members might welcome Oman's approach to extend its commitments in telecom and other types of services to all of them, it might not be able to change the actual rulings of the WTO regulations to match those of the FTA. Oman would have to accept that its telecom and other services would continue to be subject to two different sets of regulations. Extending its FTA commitments to other WTO members would only narrow the gap of its position in the two trading approaches but would not lead to fully integrate the actual regulations of the FTA into the WTO legal system.

Thirdly, as the FTA contains strong obligations on labour and environment, it would arguably be in Oman's interests that these obligations are extended to all WTO members. Thus, all its trading partners would become subject to similar arrangements. But, this would be only a too idealistic proposal and almost impossible to take place because developing countries have been

strongly opposing the incorporations of such measures into the WTO legal system. They are non-trade issues and should not be brought to the ambit of the WTO.

Fourthly, perhaps, the only exception that the researcher would not like to see fully open at multilateral level is what relates to the socially and religiously sensitive products. Oman would likely be asked by other WTO members to fully open its market to imports from other WTO members of alcohol, pork related meats, and cigarettes, in the way it did with the U.S. The EU has already been asking for such treatment in its GCC-FTA negotiations. If this happened, the Omani market could become flooded by products of these types from different countries, which would provoke the sentiments of the Omani Muslim people. Oman should stand solid in the WTO not to open its market for these products and find ways to minimise the impact of the FTA in this regard. This could be done, for example, by applying certain measures through which marketing these products would be made very difficult, such as applying strict rules to permit marketing these products, incorporating high internal taxes for licensing, and restricting their sales to certain places only such as hotels.

9.6.2. Multi-bilateral FTA

Another alternative for Oman to escape from the possible monopoly of the U.S. companies could possibly be pursued by incorporating Oman's FTA commitments into other FTAs. Thus, Oman's FTAs partners would compete on equal ground in the Omani market. However, this alternative is more problematic and more complicated than multilaterrising the FTA because of the following reasons. Firstly, this alternative would involve Oman into an endless process of discrimination. If Oman provided some specifically selected trading partners with similar treatments to its FTA with the U.S., it is simply discriminating against other non FTAs' partners. The latter would still create pressures on Oman to include them in the discriminatory dilemma and treat them equally with other partners. This potential problem is already felt in the GCC-EU FTA negotiations. As it is explored in the semi-structured interviews, the EU complained about being placed at disadvantages due to the FTAs of Oman and Bahrain with the U.S. and asked for no less treatment than those provided to the U.S.

Secondly, Oman's FTAs negotiations are conducted under the GCC umbrella. Hence, even if Oman sought to incorporate similar commitments of its U.S. FTA in those FTAs, it might not be in the interests of other GCC countries to do so. For example, as is indicated above, the EU has been asking the GCC countries to allow its exports of alcohol, pork-related meats, and cigarettes to enter the GCC markets in the same way that Oman and Bahrain have done so in

their FTAs with the U.S. However, other GCC countries, especially Saudi Arabia, have persistently refused to do so because of the social costs that will be incurred due to such openness. Thirdly, the more FTAs Oman indulges itself into, the more complex its trade commitments become. Oman is already a party to different trading commitments; the WTO, the U.S. FTA, GCC, and the Great Arab Free Trade Area (GAFTA). Oman will also be a party to the GCC- FTAs with China, Australia, the EU, Singapore, and others. Each of these trading arrangements has different rules and mechanisms for dispute settlement from the others. Oman must abide by all of them. This would be an extremely complex task and require substantial administrative capacity and dedication of a lot of human resources to follow them up and administer all the paper work.

Because of all these reasons, it would be in Oman's interests to return to the WTO and endavour to multilateralise its commitments in the FTA with the U.S., particularly in goods and services. Not only would this tactic lead to escaping from the U.S. monopoly and providing all WTO members with equal opportunity to compete in the Omani market in different sectors, but it would help Oman deal with all its trading partners equally and on the basis of one set of rules and one type of dispute settlement. Oman would be able to benefit from the technical assistance provided in the WTO and cooperate with other countries of similar interests.

9.6.3. Enhancing the administrative tools

As is explained above, Oman is now a member of different trade arrangements; the WTO, U.S. FTA, GCC, GUFTA, and other FTAs that will be singed under the GCC umbrella. But, the mere membership is not enough by itself to enable Oman to determine which of these trading arrangements better serve its interests, nor is it enough to help realising the benefits of each arrangement and evaluate its impact on Oman's trade. Thus, Oman will have to go beyond the mere membership and pursue deeper interaction with these different trading approaches particularly the WTO and its Doha negotiations. Oman will have to experience the activities of these approaches, explore the opportunities available, and attempt to avoid their challenges. But, all of that would require Oman to be better equipped, take tangible corrective measures to the way it has been dealing with trade issues, and enhance its administrative capacity. In this respect, the study proposes a set of recommendations consisting of four steps.

9.6.3.1. Step one: establishing a unified administrative entity to supervise trade agreements

At the present time, as it has been explored in the analyses of the data collected from the semi-structured interviews and the focus groups, there are two separate institutions dealing with

Oman's trade agreements; namely, the Directorate General of Organizations and Commercial Relations in the MOCI and the Directorate of Economic Relations in the MNE. Each of these two Directorates has been representing Oman in different trade arrangements. The MOCI supervised the WTO and the U.S. FTA negotiations and is responsible for all the issues related to Oman's membership to these two trading arrangements, while the MNE has represented Oman in other FTAs that are negotiated under the GCC umbrella. Some interviewees were wondering about this separation. It ultimately implies that the efforts and resources dedicated for trade negotiations and following up trade issues are dispersed between these two institutions. Thus, in order to maximise the best outcome of these resources, it is important to bring them all together in one Governmental entity. This proposed entity would be the only Government body responsible for representing Oman in trade negotiations of any kind. All efforts and resources would be unified under one single entity. Due to its experience in the WTO and the U.S. FTA negotiations, the MOCI would be more suitable to supervise this entity; i.e. the latter would administratively and financially fall under the umbrella of the MOCI.

9.6.3.2. Step two: further enhancement of the administrative capacity of the proposed entity

In the MOCI, only very few people (around six) are responsible for handling the immense daily papers work on Oman's involvement in the WTO and the FTA. Only one of them (a senior staff) is a specialist academic in international trade. They carry out the vast duties of preparing for trade negotiations, including FTAs that are supervised by the MNE. They are also tasked with organising meetings with other ministries, writing regular reports, and providing opinions about different trade issues to policy makers. The situation in Oman's office in Geneva is not any better. As is previously explained, there is only one member of staff responsible for following up different activities at the WTO, attending different meetings, and writing regular reports to the MOCI in Muscat. Also, the Directorate of Economic Relations in the MNE faces similar difficulties of limitation in the number of staff and lack of expertise in international trade agreements.

Hence, the proposal in step one of merging the two Directorates in the MNE and MOCI aims at utilising the available resources in the two Ministries in one unified entity. But, this in itself would not be sufficient enough to achieve substantial improvement in the administrative capacity. There is a necessity to employ more specialist staff who should be well-qualified on trade issues and have the capability of analysing trade agreements and assess their impact on Oman's trade. Employees should also be provided with special training on trade negotiations.

Oman could seek the help of the WTO and other trading partners such as India and China in this matter. Also, Oman would need to consolidate the number of its representatives at the WTO headquarter. More qualified people have to be employed to work in Geneva, so that further interaction with WTO activities could be achieved.

9.6.3.3. Step three: revitalising the national committee on the WTO and expanding its role

Equally important is to revive the national committee that was once established to follow up and advise the Government on the developments of the Doha Round negotiations. The committee already exists and it only requires the MOCI to assign positions to other Government bodies to bring life to it again. As Oman is now a party to different trade arrangements, the task of the committee should also be extended to cover these arrangements, as well. The committee should consist of representatives from the following institutions as they are the ones which directly deal with trade agreements and responsible for their implementations; MNE, MOCI, Ministry of Oil and Gas, Ministry of Communications and Transport, Ministry of Agriculture, Ministry of Manpower, Ministry of Regional Municipalities and Environment, Tender Board, Central Bank of Oman, Telecommunications Regulatory Authority (TRA), Sultan Qaboos University, Oman Chamber of Commerce and Industry, and Majlis Al-Shura. The committee should meet regularly; perhaps at least once every six months.

The committee should carry out the following tasks on regular basis; 1) to assess the steps undertaken towards the implementation of the trade agreements on each sector, 2) evaluate the difficulties and challenges these agreements impose on Oman's trading activities, 3) advise the Government on how these challenges could be minimised, 4) elaborate the opportunities available for Oman's trade, and 5) how these opportunities could be better exploited in each sector by the Government and private sector alike. The committee should be supervised by the Minster of Commerce and Industry to whom the reports of the committee would be forwarded. Copies of the reports of the committee should also be forwarded to the heads of each Government entities mentioned above. Also, members of these committees should be trained on trade negotiations. Their interactions with each other and their involvement in regular analysis of trade agreements would qualify them to be the representatives of their institutions in Oman's trade agreements with other countries. The work of this committee along with the above-proposed enhanced entity in the MOCI would lead to greater interaction into the global trading system and would enable Oman's policy makers to realise the benefits of the WTO and other trading agreements and minimse their challenges.

9.6.3.4 Step four: involvement of other institutions

Important institutions such as Majlis Al-Shura, Majlis Al-Dawla, the academia, and business community, were not involved in any kind of debate or discussions about Oman's negotiations with the WTO, the U.S. FTA, or GCC FTAs' negotiations with other countries. Different justifications were presented in the semi-structured interviews for the non-involvement of these institutions in debating or discussing trade agreements before signing them. For some interviewees this absenteeism was due to the under-estimation and lack of confidence of the Government bodies (MOCI and MNE) about the ability of these institutions to discuss the very detailed and complicated trade agreements. For other interviewees, this was due to the concerns of the Government bodies that involving other non-Government institutions in debating trade agreements would take very long time and could be critical to Government's policies. However, all of these justifications are not convincing enough to exclude the roles of these important institutions and deprive the country from their participation. Thus, the study strongly calls for more involvement of all these institutions in discussing and debating Oman's involvement in any free trade agreements before officially getting committed to them. This is due to the following reasons.

Firstly, the impact of such agreements would entail the whole society of which these elements are representative. Secondly, the views of these elements would be independent from those of the policy makers and would provide more neutral opinions about trade agreements from non-political angels. Thirdly, these views could be utilised during the negotiations as excuses for not agreeing about a particular issue. For instance, if Majlis Al-Shura had been involved in debating the U.S. FTA, the issue of the full liberalisation of alcohol, cigarettes, and pork-related meat would likely have been opposed. The negotiating team could have then utilised these negative opinions for not agreeing to the U.S. demands of liberalising these products. Fourthly, participations of these elements in debating trade agreements would automatically mean a share of responsibility in the policy making process, which would, in turn, reflect a more democratic face of Oman. Finally, the semi-structured interviews clearly revealed that these institutions have the capacity to debate trade agreements. They can seek independent views from academics and experts on trade issues, which would lead to more interactions of different elements in discussing these issues. In order to avoid any delay in debating trade agreements, the MOCI could specify a limited period of time during which Majlis Al-Shura or Majlis Al-Dawla or any other institution in the academia or private sector must present their views.

9.7. Limitations and directions for future researches

As is indicated in Chapter One, there is a very substantial research gap in the field of Oman's integration in international trade, as although there have been previous studies on Omani trade, none have focused on the U.S. FTA. As Oman is now more involved in different trade arrangements, the necessity for more independent academic studies on how these agreements affect Oman's trade is more imperative than any time before.

This research took the initiative of assessing Oman's position and the policy choices facing it in two different trading approaches; the multilateral WTO approach and the bilateral U.S. FTA approach. By adopting a triangular research method of data collections; official documents, semi-structured interviews, and focus groups, it has found that Oman is better situated in the MTS where its concerns can be more effectively addressed than being tied up with the FTA. Oman faces better policy choices under the multilateral WTO approach than the bilateral FTA approach. However, much of the research processes of this study have been conducted before the implementations of the FTA (January 2009). Future researches could take this research forward and assess the actual impact of the FTA on Oman's trading activities after some few years of implementation. Building on the findings of this research, the assessment of the future researches could entail specific sectors such as; telecommunications, banking, government procurement, and insurance or issues such as labour, environment, and investment. The future assessment could also follow a similar comparative design used in this research by comparing the impact of the FTA on specific sectors to that of the WTO.

Future researches should also focus on other FTAs that are currently negotiated under the GCC with Australia, China, EU, India, and others. The researches could evaluate the impact of each of these agreements on a particular sector. They could also use comparative approaches of studying Oman's position in two of these FTAs such as Oman-U.S. FTA vis-à-vis the GCC-China FTA. It would be interesting to determine the contradictory elements of these preferential arrangements and find out which one of them is more flexible and better serves Oman's trade interests. Likewise, future researchers could make similar comparison between one of the FTAs signed under the GCC umbrella such as the GCC-EU FTA and Oman's membership to the WTO, with specific focus on certain sectors.

In addition, while this research has adopted "Oman's perspective", future researches could consider adopting "U.S. perspective" and investigate how U.S. officials and businesses under

current President Barack Obama perceive the FTA with Oman. It will be useful to gauge their views on Oman as a strategic ally to the U.S. and whether the FTA would serve the U.S. trade and political interests in the Gulf region. Different issues related to the Oman-U.S FTA such as market access, government procurement, telecoms, textiles, dispute settlement, and linking labour and environment to trade could also be examined from the "U.S. perspective", perhaps by comparing them with other FTAs with Bahrain, Jordan, and Morocco.

Furthermore, the investigation of this research was undertaken at a time the Doha Round was stalled and the U.S. was devotedly pursuing a bilateral trade approach because of the ideology of Bush Administration. But, things have changed in recent few months as a new U.S. Administration is now in place. There is now more inclination to revive the Doha negotiations by developed countries, as was evident from the outcome of the recent G20 meeting held on April 2, 2009 in London with the aim to stabilise the world economy and secure recovery and jobs as a result of the global financial crisis.[3] Thus, in this changed environment, fresh research may be needed in a few years time. Nevertheless, this study has helped explaining the responses of policy makers in a small country (Oman) to the international trade agenda at a particular period of time.

9.8. Concluding remarks

The aim of this research was to evaluate the policy choices facing Oman's trade under the WTO multilateral approach vis-à-vis the FTA bilateral approach. In order to achieve this aim, a critical approach was adopted. The study concludes that the WTO approach better serves Oman's trade and provides more flexible arrangements and opportunities for Oman to express its concerns and address its interests than the FTA bilateral approach. The analysis provided in this research is a novel attempt to compare the multilateral WTO and the bilateral FTA approaches, which indicates the originality and contribution of this work.

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[3] This is particularly evident in paragraph 4 of the outcomes of the G20 summit in which the leaders stated that;

> Reinvigorating world trade and investment is essential for restoring world growth and leaders agreed on action to stop the slowdown in world trade. [Leaders were also] committed to ensure that countries do not resort to protectionism [and] not to raise trade barriers or impose any new trade restrictions [and] agreed to prioritise the negotiations [on] the Doha Round (The London Summit of G20, 2009)

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